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I

AN INTRODUCTION TO

American Institutional History

"The local annals of Maryland or of any other State are something more than mere local history, something more than part of the history of the United States or of the whole English-speaking people. They are really contributions to the general science of politics—no less than the lessons which we should have had if Aristotle's comments on the kindred commonwealths of old Greece had been spared to us."—*Freeman.*

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

I

AN INTRODUCTION TO
American Institutional History

WRITTEN FOR THIS SERIES

By EDWARD A. FREEMAN, D.C.L., LL.D.

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MR. FREEMAN'S VISIT TO BALTIMORE.

By the Editor.

Mr. Freeman came to America in the fall of 1881, on the joint invitation of the Lowell Institute in Boston and of the Peabody Institute in Baltimore. The united influence of these two local institutions, representing the intellectual union of Northern and Southern cities, was seconded by two other influences of a local character: first, by Mr. Freeman's natural desire to visit his own son, who married in Baltimore and who now lives upon a plantation in Virginia; secondly, by an ardent longing to see with his own eyes a New England Town Meeting, which, in the genealogy of local institutions, is a long-lost child of Old England and a grandchild of the Fatherland. The historian of "The English People in their Three Homes" regards the local institutions of the United States, North and South, as the historic offspring of England and Germany, as truly as his own name, once applied to all freemen of the English Colonies in America, is directly perpetuated by children and grandchildren in the Old Dominion, where he indulged what he pleasantly calls "oldfatherly emotions towards the last-born *bairn's bairn*," and where, true to historical impulses, he began a "Virginia Domesday" in the old forms: "*Freeman tenet; Bell tenuit Ante Guerram. Valebat . . . dollarios; modo . . . Waste fuit.*" With the grim humor of William the Conqueror, who, when he fell to the earth upon landing at Pevensey, grasped the soil and thus took seizin of England, Mr. Freeman describes his son's territorial conquest upon the shore of the Rapidan, "*Potuit ire quo voluit cum ista terra*, for the soil of the Old Dominion sticketh to the boots and is carried about hither and thither!"

This extract from a letter dated Somerleaze, Rapid Ann Depot, Culpeper County, Virginia, December 25th, 1881, needs no better commentary than the following extract from the *Inquisitio Eliensis*, Domesday, iii, 497 (or Stubbs' Select Charters, 86): "*Deinde quomodo vocatur mansio, quis tenuit eam tempore Regis Eadwardi; quis modo tenet; . . . quantum valebat totum simul; et quantum modo; . . .*" The suggestion of Domesday-forms came to Mr. Freeman not only from the history of Virginia land-tenure, but from Professor William F. Allen's paper on "The English Cottagers of the Middle Ages," a paper which had been sent Mr. Freeman in answer to his query "about a man in Wisconsin, who has written something about villainage—what a long way off to know about such things—how can I get it?" And after receiving the

above paper, Mr. Freeman inquired with manifest surprise, "Are his cottagers the *cotarii* of Domesday?" The historian of the Norman Conquest was reminded of items in Domesday by the "*Afri*" of the South, who still survive in emancipated forms. The negroes of the Old Dominion are no longer "*servi*," but their varying economic condition might justify their enumeration in some such classes as appear in the Norman census: "*villani*," "*cotarii*," "*sochemani*," "*liberi homines*."

It brings the historian of "The English People in their Three Homes" to the very heart of both North and South to think of him as spending Christmas with his American children upon a Virginia Plantation, called after the Old Home in England, "Somerleaze," where, resting from lectures and labors, he indulges "oldfatherly emotions" towards his American grandchild. It is pleasant to think of the Nestor historian "among the hills, enjoying the air, with the Blue Ridge right in front," and reading a novel about the Old Dominion written by a Virginia lady now living in Baltimore. He writes to this city for information touching the plot of the historical novel. "Was there not a negro revolt once hereabouts called Gabriel's War? I was reading a pretty story called *Homoselle*, where it comes in, and I seem to have heard of it before; but nobody here can tell me. If the chronology of the story be right, it must have been between 1837 and 1861." And later he returns to the point: "I knew I had heard something of that Gabriel's War, but Mrs. Tiernan must have altered the date. You say it was early in this century; but *Homoselle* lies in the time 1837–1861. For, on the one hand, Victoria reigns in Great Britain; on the other, Peace and Slavery reign in Virginia.* I want to

* Gabriel's War, a negro insurrection headed by a slave of uncommon ability, known as "General Gabriel," occurred in the year 1800. The uprising was planned with great skill and secrecy, and embraced about one thousand slaves. The plan was to make a night attack upon Richmond, massacre the male inhabitants, spoil the city, seize arms, and create a general panic among whites throughout the State, whereupon, it was thought, a general insurrection could be kindled among the slave population. On the night of the proposed attack there was a furious rain-storm; but the slaves, undaunted, advanced with their scythe-blades and axes. The attack was frustrated by two unforeseen events, the rapid rising of a creek before Richmond, and the betrayal of the plot by a faithful servant of William Mosby—a slave named Pharaoh—who swam the creek at the risk of his life and gave the alarm in Richmond. The town was at once put under arms, and the slaves, finding that their plot was discovered, rapidly dispersed. James Monroe was at that time Governor of Virginia and he offered a reward of three hundred dollars for the arrest of Gabriel, who was finally taken and executed. Many other conspirators were found out and were duly tried and convicted by the court of "Oyer and Terminer," made up of county justices. The Court Records of Henrico County contain evidence upon this matter, see Howison's History of Virginia, ii, 392-3. This insurrection naturally created the greatest horror throughout all Virginia, and the story of Gabriel's War was repeated until it became a household tale. The authoress of *Homoselle* did not need to consult the written history of Virginia for information, for the oft-told story was stamped upon every child's imagination. Mrs. Tiernan never saw Howison's account of Gabriel's War until after her story was written, the scene of which she purposely laid in later times of which she herself had personal knowledge. Without regard to the exact chronology of Gabriel's War, Mrs. Tiernan utilized a popular tradition for literary purposes, which is not only an artistic but a perfectly legitimate method in *Culturgeschichte*.—H. B. A.

know another thing. *Homoselle* speaks of a free negro in Virginia. Another story speaks of free negroes as forbidden to dwell there. Some of your students of State laws will know the date of that bit of legislation."*

Mr. Freeman's visit to Baltimore occurred before his visit to Virginia. He lectured first in Boston, then at Cornell University, and immediately afterwards in Baltimore at the Peabody Institute, beginning November 15 and continuing until November 25. Both Cornell and Johns Hopkins Universities availed themselves of Mr. Freeman's visit to America to engage him for short courses of lectures before their students. On arriving in Baltimore, the first place Mr. Freeman visited was the University-Library. Although the historian professes "to hate libraries as well as schools," his professions should not be taken quite literally. He evidently enjoyed what some people call the "Johns Hopkins *School*," and he stayed one entire forenoon, and came again the next day. He found some things that he had never before seen, and he manifested considerable interest in the so-called "New Book Department"—an arrangement for securing the most recent scientific literature from England, France, and Germany. Mr. Freeman saw at once the cosmopolitan relations and practical value of this department and also of the University system of "exchanges" with the proceedings of academies and other learned societies of the old world. He even intimated that his own

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* Free negroes were "permitted by the court of any county or corporation to remain in this State" (Code of Va., 1849, 466, Code, 1860, 520); but the *law* against emancipated negroes abiding in the State or Colony was of very ancient standing. According to the Act of 1691, no person could set free a slave, without paying for his transportation out of the country within six months after setting him free. The Act of January 25, 1806, was fundamental to all Virginia legislation during the present century touching the condition of freedmen; it was provided that if any slave thereafter emancipated should remain within the State more than twelve months after his right to freedom accrued, he should forfeit such right and might be sold for the benefit of the poor of the county or corporation. Cf. Acts 1815–16, Code 1819, Acts 1826–7, 1830–1, 1836–7. By an Act of 1840–1, "No free negro shall migrate into this State." By the Va. Const. of 1851, which was in force in 1860, "Slaves hereafter emancipated shall forfeit their freedom by remaining in the commonwealth more than twelve months after they become actually free, and shall be reduced to slavery as may be prescribed by law." The letter of the law was probably more severe than the spirit of its execution. In point of fact, both free and emancipated negroes were *always* allowed in Virginia by permission of the justices of a county court. In fact, the law allowed "free negroes" to "be registered and numbered" every five years by the clerk of the county court (Codes of 1849, 1860). Free negroes were even allowed to own slaves of a certain kind, for example, a free negro could own his wife and children, and their descent, also his own parents. And conversely, a free negro wife might own her husband, children, and parents.

A student from South Carolina, Mr. B. J. Ramage, says it was no unusual thing before the war for free negroes to own considerable property, both real estate and slaves. He calls attention to an interesting item in the Baltimore *Day*, September 27, 1882: "Henry Todd, who lives in Darien, is the wealthiest colored man in Georgia. When a youth, his master died and left him his freedom. When the Confederacy fell, he lost twenty slaves and some Confederate bonds. After the war, he continued farming operations and engaged in the lumber business. He is now 65 years old and is worth $100,000 in good investments."—H. B. A.

retired life at his country-home in Somerset cut him off in some degree from the main stream of contemporary literature, to which members of the Johns Hopkins have constant access. This frank confession is not at all inconsistent with Mr. Freeman's well-known answer to the American professor who asked him where he wrote his books: "In my own house, to be sure, where else should I?" Although the historian of the Norman Conquest declares that he has never in his life consulted the library of the British Museum, yet he himself admits that, "There are times for which the library of the British Museum, or any other public library must be invaluable; but these times are not the eleventh and twelfth centuries." The point is, that for a man's own *special* study, it is possible to have, in some cases, all necessary original materials around him. That point Mr. Freeman saw illustrated again and again in the special department-collections of the Johns Hopkins *Universitas Studiorum*. But it would be strange indeed if the great and rushing stream of nineteenth century literature did not impress the English historian of politics even more profoundly than it does those who are borne upon the current. He feels keenly enough "the utter hopelessness of keeping up with the ever-growing mass of German books, and yet more with the vaster mass of treatises which are hidden away in German periodicals and local transactions. Of all of these every German scholar expects us to be masters, while to most of us they are practically as inaccessible as if they were shut up in the archives of the Vatican."

The continuity of human history is the life principle of Mr. Freeman's philosophy. This principle he found already transplanted to American shores. He found it germinating in the Public Schools of Baltimore through the influence of his friend the Superintendent of Public Instruction, Henry E. Shepherd, formerly a student at the University of Virginia, now President of Charleston College, South Carolina. He found this principle bearing fruit in the Johns Hopkins University. The English historian became interested at once in the studies of Historical and Political Science, which were there in active progress. He met students in private and in public. He visited their special libraries and work-shops, where he lent his master-hand in aid of apprentice tasks. With Bacon's folio edition of the Laws of Maryland before him, he pointed out to Maryland young men—graduates of the Johns Hopkins University, the City College, and the Public Schools—the continuity of Old English institutions in their native State. He went with a member of the University to the Library of the Maryland Historical Society, where in the company of Mr. John H. B. Latrobe, the President, Mr. J. W. M. Lee, the Librarian, and other members of that institution, he examined some of the manuscript records of Colonial Maryland. And, before leaving Baltimore, he penned the following letter which was intended by him to quicken public as well as individual interest in the collection and publication of the Maryland State Papers.

"*Mount Vernon Hotel, Baltimore, November 27th,* 1881.

"I cannot leave Baltimore without saying a word or two about the State records of Maryland, of which you were good enough to give me a glimpse both in the University Library and in that of the Historical Society. I did not see much, but I saw enough to get some notion of their great interest and importance. But the few things which I saw either in print or in manuscript must, I fancy, be mere fragments from far greater stores at Annapolis or elsewhere. A systematic publication would be a very great gain, and the State Legislature would surely not refuse its help, if the matter were pressed upon it by influential persons and societies in the State. During the short time that I have been in America, I have been more and more impressed by the deep interest of the early history of all these lands, first as provinces, then as independent States. Each State has, in the most marked way its own character, and gives some special kind of instruction in comparative political history. The local annals of Maryland or of any other State are something more than mere local history, something more than part of the history of the United States or of the whole English-speaking people. They are really contributions to the general science of politics—no less than the lessons which we should have had if Aristotle's comments on the kindred commonwealths of old Greece had been spared to us. . . . ."

This letter, shown to influential men, and read to the Historical Society by the Hon. George William Brown, in connection with a similar letter written by James Bryce, M. P., who was in Baltimore at the same time with Mr. Freeman, has at last resulted, through the combined action of the Society and of the State Legislature, in the transfer of the mass of Colonial and Revolutionary Archives from Annapolis to Baltimore, where, in a well-lighted but fire-proof vault lately constructed by private subscription, the manuscript records can be used to the best advantage by students of Maryland History. The State has also provided for the gradual but systematic publication of these Archives under the auspices of the Maryland Historical Society. Thus by the institution of an honorable Record Commission, a purely scientific undertaking is removed from all political influences. These results are the direct historic outgrowth of Mr. Freeman's letter, supported by personal and corporate power. The letter was first published in the New York *Nation*,* immedi-

* Note in the *Nation*, December 22, 1881, in connection with a review of the "Calendar of Virginia State Papers;" cf. article in the Baltimore American, December 24, 1881; editorial in the Sun, December 26, 1881; New York Times, December 29, 1881. An account of the Archives themselves and of the provisions of the Bill which passed the Maryland Senate March 16 and the House of Delegates, March 12, 1882, may be found in the *Nation* "Notes," March 30, 1882; also, in the same number, an account of the "Stevens Index of Maryland Documents in the State Paper Office, London," which Index, containing descriptions and abstracts of 1,729 Maryland documents now preserved in

ately afterwards in Baltimore newspapers, and a copy of it was sent to every member of the Maryland Legislature. The letter is reproduced above in a more complete form than heretofore, for the sake of its permanent preservation as a contribution to the Science of Maryland History.

Mr. Freeman's visit to Baltimore has a certain historical value, which will become more and more apparent when the influence which he exerted here upon the Historical Society and upon the Johns Hopkins University goes forth into the State of Maryland and into the country at large. The English lecturer made an impression wherever he went in this country, in Boston, Ithaca, New Haven, Providence, New York, Philadelphia, St. Louis, and other places; but it is the writer's belief, based upon careful inquiry, that the impression produced upon the students of the Johns Hopkins University, the young life of Baltimore, was the best, the strongest, and the most abiding of all. While his public lectures at the Peabody Institute and elsewhere excited much attention and remark at the time they were given, yet these popular addresses, tested by the comparative method, were everywhere less quickening and less permanent in their historic influence than the half dozen informal "talks" given to a company of advanced students, meeting in Hopkins Hall upon the afternoons of days alternating with Mr. Freeman's public lectures at the Peabody Institute. In a room of small size, before a strictly University audience, without a sheet of paper between him and his hearers, with no lyceum-apparatus save a pointer and one or two outline-maps prepared for the illustration of special matters, Mr. Freeman in plain English,—vigorous, and eloquent—set forth "the Eternal Eastern Question" in the light of past Politics and present History. He spoke of the Roman Power in the East; the Saracens and the Slavs; the final Division of the East and the West; the Turks, Franks, and Venetians; the Ottomans and the Beginnings of Deliverance. Probably no such telling, inspiring course was anywhere given by the English historian in his American tour.

Circumstances contributed to make Mr. Freeman's lectures at the Johns Hopkins University a peculiar and remarkable success. In the first place, the President of the University had insisted upon it that Mr. Freeman should *talk* to the students upon some special theme instead of *reading* one of his two general courses of written lectures. The informality of these "talks" which Mr. Freeman was at first very reluctant to give, was made doubly pleasing by the fact that the historian proved a good extempore speaker. The author of the Norman Conquest has "stumped" the County of Somerset and knows how to make a good

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England, was presented to the Maryland Historical Society by George Peabody, and thus supplements the Annapolis collection. These *Nation* "Notes" of March 30, 1882, were reprinted in the Johns Hopkins University Circular, May, 1882.

off-hand speech. In the second place, the natural orator was doubtless fired by the enthusiasm of his student-hearers and by the presence and applause of another historian and politician, his friend James Bryce, M. P., whose remarkable lectures upon English Politics followed close upon Mr. Freeman, upon the same platform, and upon the same days. But what most of all contributed to Mr. Freeman's success at the University was the unimpeded rush of his own thought and feeling into the historic fields of South-Eastern Europe, on which political interest was then centering anew.

Mr. Freeman had come to America directly from Dalmatia without tarrying in England. He had come from the historic border-ground between the Aryan and the Turk, between Venice and the Ottoman Power, between Old and New Rome. He had come to the Western Empire of the English People, which, expanding with the great Teutonic race from local centres, is repeating in the continental island of Atlantis and in the continent of Asia, with Egypt and Ocean between, the experiment of the Roman People upon a grander and nobler scale. He came from ancient municipal centres of Grecian culture and Roman dominion,—from Ragusa, upon the rocks of the Dalmatian coast, a city of refuge for the Grecian colony of Epidauros,* as Rome was a city of refuge for the village communities of Italy,—from Spalato in Dalmatia, once a city of refuge for a Roman Emperor, Diocletian, who, born in this Illyrian border land, was the first to propose the institution of two Caesars and of Roman capitals wherever Emperors took up their abode, whether at Spalato, Nikomedeia, Milan, Trier, or York.

The English historian of "The Illyrian Emperors and their Land" came to a *new* York and to other capitals of a westward-moving English Empire. Like an historical ambassador from the East, such as Emanuel Chrysoloras, who came from Constantinople to Rome in 1396 in the interest of the Eastern Empire and tarried in Italy three years to teach Greek; or as Georgius Gemistus (Pletho) who came in the interest of the Greek Church to attend the Council of Florence in 1439 and remained in that city for many years to lecture upon Platonic Philosophy, even so the historian of "The English People in their Three Homes," coming to Boston and Baltimore with a message upon his lips that invited national belief in the civic kinship and religious unity of England and America, came also with another message from the East. He came representing the *history* of an older Eastern Empire than that of England in Egypt and India. He came with a book in press upon "The Subject and Neighbor Lands of Venice"† (Spalato, Ragusa, and other Dalmatian

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*Epidauros in Dalmatia is now known as Ragusa Vecchia. Curiously enough, the mother-town has taken its daughter's name. It is as though England should assume the name, Old America.

†Reviewed in the *Nation*, February 9, 1882.

cities) and before that book was published in America, Mr. Freeman had told students in Baltimore the story of the Republic of Ragusa, "the one spot along that whole coast from the Croatian border to Cape Tainaros itself, which never came under the dominion either of the Venetian or of the Turk,"—that city upon the rocks which "has always sat on a little ledge of civilization . . . . with a measureless background of barbarism behind her." Before Mr. Freeman's article on "The Revolt in Dalmatia" was published in the *Nation* (February 16, 1882), the latest dispatches upon which that article was based had been made known in Baltimore. The letters and telegrams from Ragusa to the *Manchester Guardian* by Arthur Evans,* Mr. Freeman's son-in-law, were almost the only trustworthy sources of information in England regarding affairs in Dalmatia. Mr. Freeman left Ragusa in June, 1881, when, as he says in the *Nation*, "the storm was beginning." From that time on, Mr. Evans kept him informed as to the progress of the Revolution, and those manuscript letters from Ragusa were shown to students in Baltimore.

In such ways, through living, winged words, *ἔπεα πτερόεντα*, young men in America were made to realize that contemporary Politics is only History in the making. And they will use a motto from Mr. Freeman — History is past Politics and Politics present History† — not only upon the wall of their class-room, but upon their published "Studies in Historical and Political Science," to which the Historian of Politics kindly offers an Introduction, which he wrote after his return to England, to his own Home at "Somerleaze." There in the South-West of England, in his own library, looking out upon his own land and trees, with his face toward the low-lying hills of Mendip, the historian of the Norman Conquest meditates upon the relation of Past and Present. That his thoughts occasionally go out from the old country to the new, is evident not only from his voluntary contribution to American past Politics, but from his sending to Baltimore, to the Seminary of Historical and Political Science, his most recent contributions to English magazines and newspapers, sources of present History.

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* Mr. Evans has been for some years an authority upon affairs in South-Eastern Europe. His letters to the *Manchester Guardian* during the year 1877 have been published in book-form under the title of "Illyrian Letters—A revised selection of correspondence from the Illyrian provinces of Bosnia, Herzegovina, etc." (London, 1878.) An earlier work by Mr. Evans is entitled "Through Bosnia and the Herzegovina on foot during the insurrection, August and September, 1875" (Second edition, London, 1877).

† This motto is the pith of a sentence in Mr. Freeman's address in Birmingham, November 18, 1880. "On the Study of History," printed in the *Fortnightly Review*, March, 1881, p. 320, where he says it is "a highly practical truth that history is simply past politics and that politics are simply present history;" cf. p. 329. Another original form of the aphorism is: "History is the politics of the past, politics are the history of the present." Note also the same idea in Mr. Freeman's Lectures to American Audiences, p. 207: "Now the position for which I have always striven is this, that history is past politics, that politics are present history."

INTRODUCTION

—TO—

AMERICAN INSTITUTIONAL HISTORY.

THE study of the local institutions of the states, counties, towns, and the like, through the United States, and indeed through America generally, is, to my mind, a matter of a good deal more than local interest. Its immediate attraction of course is strongest for those to whom it is a matter of local interest; but its importance goes a great deal further. Whenever institutions have grown up of themselves, as they largely have done in at least the Eastern States of the Union, they become a matter of scientific study. The institutions of Massachusetts or Maryland, such at least among them as have been handed down from the foundation of those colonies, are not simply the institutions of Massachusetts and Maryland. They are part of the general institutions of the English people, as those are again part of the general institutions of the Teutonic race, and those are again part of the general institutions of the whole Aryan family. There I must stop; some of my friends are able to go further; and, if they can prove that something which I am satisfied with showing to be English, Teutonic, Aryan, is really common to all mankind, they do me no wrong. The history, in short, of a Massachusetts township or a Maryland manor* becomes, if looked

*The subject of Old Maryland Manors has been investigated by John Johnson, a graduate of the Johns Hopkins University. Interest in this research was heightened by the examination, in the Library of the Maryland Historical Society, of the records of an actual Court Leet, held upon St. Clement's Manor, in St. Mary's County. The Court Leet, the existence of which in Maryland has long been denied, was a popular institution, a kind of Town Meeting on the Lord's Manor. Such a manorial survival is, like the old Town Pasture at Annapolis, a connecting link between Province Maryland and Early England.—H. B. A.

at in a scientific spirit, part of the general history of the world. Of course I assume that they are studied in a scientific spirit. Even the researches of the dullest local antiquary have their use; that is, they may be turned to some use by a more intelligent inquirer, by one who sees in them a value which the original collector fails to see. The scientific view of such matters consists mainly in dealing with them by the comparative method. To say that a certain custom exists in Massachusetts now and to say that a certain custom existed at Athens ages ago are both of them pieces of knowledge which, if they go no further, are of no great value or interest. But, if you can bring the Massachusetts custom and the Athenian custom into some kind of relation towards one another—if you can show that, among much of unlikeness in detail, the likeness of a general leading idea runs through both—if you can show that the likeness is not the work of mere chance but that it can be explained by common derivation from a common source—if again you can show that the points of unlikeness are not mere chance either, but that they can be explained by differences in time, place, and circumstance—if you can do all this, you have indeed done something for the scientific study of Comparative Politics.*

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*Three or four years ago, at a suggestion from Professor B. L. Gildersleeve, the editor of this series began to collect materials illustrating the local institutions of the ancient Greeks, with the view of ultimately drawing certain historical parallels between their Village Community system and that of the Teutonic race, especially of its New England branch. The agrarian customs, the local assemblies, market places, village elders, the predominance of kinship in the village constitution, the sanctity of house and home, the reverence for ancient landmarks and the bounds of the village, the branching out of new communities from the parent stock, and the association of kindred villages in a larger municipal commonwealth,—these and other features of Greek and Teutonic local life are strikingly similar and illustrate the fact that the old Aryan tree has been budding and blossoming in much the same way for three or more thousand years. The Grecian branch of institutional genealogy is assuming fresh interest from year to year in the light of German monographs and revisions of earlier standard works.—H. B. A.

But, coming nearer our own concerns, the institutions of the American States form a natural and important part of the institutions of the Teutonic race, and specially of the English branch of it. The institutions of England are the general institutions of the Teutonic race, modified, as they could not fail to be, by settlement in a great European island, and by the events which have taken place since that settlement. The institutions of the American States are the institutions of England, modified, as they could not fail to be, by settlement in a greater American continent, and by the events which have taken place since that settlement. We do not rightly understand the history of our people on either side of Ocean, unless we take in the close analogy—notwithstanding many points of unlikeness—between the English settlements in Britain in the fifth and sixth centuries, and the English settlements in America in the seventeenth century. The likeness comes out most strongly if we contrast either with the Norman Conquest in England or with the Spanish conquests in America. These again differ greatly from one another; but they agree in the comparatively short time in which the work was done. In both of them settlement took the form of conquest, and of conquest on a great scale. But those who came in the three keels of Hengest and those who came in the Mayflower were both of them in a different position. They settled in small companies and won the land bit by bit. They brought with them the institutions of their elder country, such of them at least as suited the condition of their new country; they planted them afresh, and what they planted grew up with such changes as were wrought by the nature of the new soil in which it was planted. The most notable thing of all, yet surely the most natural thing of all, is that the New England settlers of the seventeenth century largely reproduced English institutions in an older shape than they bore in the England of the seventeenth century. They gave a new life to many things which in their older home had well-nigh died out. The necessary smallness of scale in the original settlements was the root of the whole matter. It, so to speak, drove them back for several centuries: it caused them to reproduce, in not a few points, not the England of their own day, but the England of a far earlier time. It led them to reproduce in many points the state of things in old Greece and in mediaeval

Switzerland. Such a state as Rhode Island is as essentially ancient as Uri itself; that is, a new Rhode Island could no more come into being now than a new Uri. A New England town-meeting is essentially the same thing as the Homerica ἀγορή, the Athenian ἐκκλησία, the Roman *comitia*, the Swiss *Landesgemeinde*, the English folk-moot. The circumstances of New England called the primitive assembly again into being when in the older England it was well-nigh forgotten. What in Switzerland is a *sur*vival was in New England rather a *re*vival. But the causes alike of the survival and of the revival are part of the general history of the institutions of the Teutonic race.

But New England does not make up the whole of the English settlements in America. We have further to compare the points of likeness and unlikeness, and the causes of the likeness and unlikeness, between the New England states, which so largely came of themselves and other states which arose under other influences. We mark a difference between the proprietary colonies, and those which were practically independent commonwealths from the beginning. Maryland reproduced English institutions no less than Massachusetts; but Massachusetts and Maryland did not reproduce exactly the same English institutions. But it is plain that the more popular institutions were more at home on the soil of the New World. A lord proprietor whose rights were measured by those of the Bishop of Durham was an anomaly in a newly settled land. Greater local independence, closer connexion with the Government of the mother country, were either of them more natural states. Maryland, therefore, advanced in the direction of Massachusetts; Massachusetts did not advance in the direction of Maryland.*

I noticed in Virginia, the only one of the Southern States of which I have seen anything, that I heard the word *county* at least a

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*The Palatinate of Durham, after which the proprietary powers of Lord Baltimore were modelled in the charter of Terra Mariae, has been made the subject of careful investigation by Mr. Basil Sollers, a graduate of the City College, Baltimore, and a member of the University-Seminary of Historical and Political Science. Although Palatine rights were granted to the Lord Proprietor, yet practically, from the very outset, the government of Maryland was a government by the people.

—H. B. A.

hundred times for once that I heard it in New England. The merest glance at the two countries shows that, setting aside the results of late events, the whole political organization of the two countries is different. Both have reproduced English institutions; but they have not reproduced the same English institutions. I suppose that Virginia and New England must be the most strictly English parts of the United States; the mixture of any foreign element in the original settlement must have been very small in either. But the two lands represent two different sides of England. Virginia more nearly reproduced the England of the time of the settlement. New England more nearly reproduced the England of an earlier time. The causes of this difference, causes inherent in the different circumstances of the two settlements, again take their place in the general course of English and of Teutonic history.

Thus far one has had to speak wholly of reproductions of strictly English institutions. In some of the other States we find materials for study of another kind. The State of New York, once New Netherlands, affords us the remarkable phenomenon of a land settled by one body of Teutonic settlers and afterwards by the accidents of warfare transferred to another. The two sets of colonists were both of the same original stock and the same original speech; but the circumstances of their several histories had made them practically strangers to each other. On the Nether-Dutch of Holland and Zealand transplanted to the new world came in the Nether-Dutch of England. The two elements have been fused together into one whole, but not without leaving memories and signs of the old distinction. Here is a field of special interest. We have not only, as in New England, to compare a newer England with an older; we have also to compare an older and a newer Holland; and to study the changes wrought in it by the infusion of an element really kindred though outwardly foreign. And again another question is raised. The same elements which were brought together in the State of New York have been more lately brought together at the Cape of Good Hope. But the results have been widely different in the two cases. I do not profess to have worked out the causes of the difference; but the question is one which is well worth searching into.

In other parts of the Union my favourite talk about Old, Middle, and New England ceases locally to apply. I see with pleasure that one of the subjects set down for research is French Towns in Wisconsin. I have not myself seen anything of the State of Wisconsin. But at St. Louis I was strongly impressed with a line of thought which comes out much more forcibly in Missouri than it can come out in Wisconsin. We cannot call Wisconsin a colony of the English people in the same sense as Massachusetts and Virginia, though both Wisconsin and Missouri may be called colonies of the English people in a wider sense. Wisconsin was for a while a possession of the British crown, and changed its allegiance as a result of the War of Independence. But when I crossed the Father of Waters, and found myself at St. Louis, my first feeling was that I had got altogether out of the historic range of which Massachusetts and Virginia form parts. Here was a land which was no colony of the English people, no possession of the British crown, which the War of Independence in no way touched, which had no part or lot in Washington or his fellows, but which was bought for money by the United States, after they had become the United States, and after Washington was no more. Yet I found myself in an English-speaking land, a land in which traditions and memories common to the whole Union were as strong as anywhere else. I know that traces of the elder state of things have by no means wholly vanished; but they do not strike the visitor on the surface. I was at once struck with the outward analogy between those parts of the American Union which formed part of the old Louisiana and those parts of the Swiss Union which formed no part of the old German League. The Romance Cantons of Switzerland have absolutely nothing to do with the history, rich and legendary, of the original Three Lands. Yet the history of the Three Lands, real and legendary, has been thoroughly adopted by the Romance Cantons; Tell and the Three Men of Grütli may be seen at Geneva and at Lugano no less than at Altdorf itself. Here a wholly distinct people has adopted the history and legend of the body into which it has been itself adopted. In the American case, though the land of the old Louisiana has nothing to do with the War of Independence and its worthies, yet the mass of its inhabitants have the same right in them as the inhabitants of

other parts of the Union. That is to say, the Romance lands of Switzerland have adopted the traditions of their Teutonic neighbours while still retaining Romance; the Romance lands of America have adopted the traditions of their Teutonic neighbours by the more effectual process of receiving their Teutonic neighbours within their borders.

I have gone off a good way from the subject on which I originally meant to say a few words. But my very wanderings may help to show how easily the study of the local institutions of the American states connects itself with the general study of European history, and with the study of the general history of institutions, above all with the institutions of the Teutonic race and specially of its English branch.

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*Doubtless I visited America under circumstances which were likely to make me dwell on likenesses rather than on unlikenesses. It might haply have been otherwise if I had known nothing of the continent of Europe, or if I had entered America, as some have done, on its western side. But I came to America from the east, and that as a somewhat old stager in continental Europe. I came as one fresh from Italy, Greece, and Dalmatia, as one who had used his own house in England as an inn on the road between Ragusa and Boston. Among a people of the same tongue, of essentially the same laws and manners, I naturally found myself at home, after tarrying in lands which were altogether foreign. But I have no doubt that deeper causes than this would naturally lead me to seize on the most English side of everything American. To me the English-speaking commonwealth on the

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*It has been thought not inappropriate to reprint in connection with this Introduction, which was prepared by Mr. Freeman expressly for this University Series, the following extracts from his "Impressions of America," recently published in the *Fortnightly Review* (August and September, 1882), articles touching American Institutions and dwelling upon the importance of studying them in the light of European history and of the comparative method.—H. B. A.

American mainland is simply one part of the great English folk, as the English-speaking kingdom in the European island is another part. My whole line of thought and study leads me to think, more perhaps than most men, of the everlasting ties of blood and speech, and less of the accidental separation wrought by political and geographical causes. To me the English folk, wherever they may dwell, whatever may be their form of government, are still one people. It may be that the habit of constantly studying and comparing the history of England with the History of Old Greece, makes it easier for me to grasp the idea of a people, divided politically and geographically, but still forming in the higher sense one people. The tie that bound Greek to Greek was dearer to Kallikratidas than the advancement of Spartan interests by barbarian help. And so, to my mind at least, the thought of the true unity of the scattered English folk is a thought higher and dearer than any thought of a British Empire to the vast majority of whose subjects the common speech of Chatham and Washington, of Gladstone and Garfield, is an unknown tongue.

It may be more important to ask how far the doctrine of the essential unity of the divided branches of the English people is received by those whom it concerns on the other side of the Ocean. This is a subject on which I rather distrust my own judgment. I feel that it is a subject on which I am an enthusiast, and that my enthusiasm may possibly bias and color any report that I may try to make. And, of course, I can give only the impressions which I have drawn from certain classes of people, impressions which may be widely different from those which another man may have drawn from other classes of people. As far as I can speak of my American acquaintances, I should say that with most of them the essential unity of the English folk is one of those facts which everybody in a sense knows, but of which few people really carry their knowledge about with them. The main facts of the case are so plain that they cannot fail to be known to every man among a people who know their own immediate and recent history so well as the Americans do. That the older American states were in the beginning English colonies, that the great mass of their inhabitants are still of English descent, that, though the infusion of foreign elements has been large, yet it is the English kernel which has assimilated these foreign elements—that the German in America,

for instance, learns to speak English, while the American of English descent does not learn to speak German—all these are plain facts which every decently taught man in the United States cannot fail in a certain sense to know. That is, if he were examined on the subject, he could not fail to give the right answers. But the facts do not seem to be to him living things, constantly in his mind. Those Americans with whom I have spoken, all of them without a single exception, readily and gladly accepted the statement of what I may call their *Englishry*, when it was set before them. Once or twice indeed I have known the statement come from the American side. But, though the acceptance of the doctrine was ready and glad, it seemed to be the acceptance of a doctrine which could not be denied when it was stated, but which he who accepted it had not habitually carried about in his daily thoughts. And when the statement came from the American side, it came, not as an obvious truth, but rather as the result of the speaker's own observation, as a fact which he had noticed, but which might have escaped the notice of others. I will illustrate my meaning by an incident which happened to myself. At a college dinner to which I was asked, one gentleman proposed my health in words which in everything else were most kind and flattering, but in which I was spoken of as a man of "a foreign nationality." In my answer I thanked the proposer of the toast for everything else that he had said, but begged him to withdraw one word: I was not of a foreign nationality, but of the same nationality as himself. My answer was warmly cheered, and several other speakers took up the same line. The unity of Old and New England was in every mouth; one gentleman who had been American Minister in England told how exactly the same thing had happened to him at a Lord Mayor's dinner in London, how he had been spoken of as a foreigner, and how he had refused the name, just as I had done. . . . .

In the broad fact of the War of Independence there is really nothing of which either side need be ashamed. Each side acted as it was natural for each side to act. We can now see that both King George and the British nation were quite wrong; but for them to have acted otherwise than they did would have needed a superhuman measure of wisdom, which few kings and few nations ever had. The later American war within the present

century, a war which, one would think, could have been so easily avoided on either side, is a far uglier memory than the War of Independence. Still the War of Independence must be, on the American side, a formidable historic barrier in the way of perfect brotherhood. A war of that kind is something quite unlike an ordinary war between two nations which are already thoroughly formed. Two nations in that case can soon afford to forget, they can almost afford to smile over, their past differences. It is otherwise when one nation dates its national being—in the political sense of the word "nation"—from the defeat and humiliation of the other. If the American nation had parted off peacefully from the British nation, there would be no difficulty on either side in looking on the two English-speaking nations as simply severed branches of the same stock. The independent colony would, in such a case, have far less difficulty in feeling itself to be, though independent, still a colony, far less difficulty in feeling that all the common memories and associations of the common stock belong to the colony no less than to the mother-country. In such a case the new England might have been to the old what Syracuse, not what Korkyra, was to their common mother Corinth. But when independence was won in arms, and that by the help of foreign allies, when the very being of the new power was a badge of triumph over the old, it is not wonderful that the natural self-assertion of a new-born people often took the form of putting the past, the dependent past, as far as might be out of sight. Parents and brethren had become enemies; strangers had acted as friends; it was not wonderful if it was thought a point of honor to snap the old ties as far as might be; to take up in everything, as far as might be, the position of a new nation, rather than that of a severed branch of an old nation. I can understand that the Englishman of America may be tempted to see something of sacrifice, something like surrender of his national position, when he is called on to admit himself simply to be an Englishman of America. The Englishman of Britain has no such difficulties. To his eye the kindred lies on the surface, plain to be seen of all men. But it is not wonderful if the eye of the Englishman of America is a degree less clear-sighted. He may be pardoned if to him the kindred does not lie so visibly on the surface; if it is to him something which he gladly acknowledges when it is

pointed out, but which he needs to have pointed out before he acknowledges it. . . . .

The ideal after which I would fain strive would be for all members of the scattered English folk to feel at least as close a tie to one another as was felt of old by all members of the scattered Hellenic folk. Geographical distance, political separation, fierce rivalry, cruel warfare, never snapped the enduring tie which bound every Greek to every other Greek. So the Englishman of Britain, of America, of Africa, of Australia, should be each to his distant brother as were the Greek of Massalia, the Greek of Kyrênê, and the Greek of Chersôn. I have no doubt that it is a piece of pedantry to hint at the fact, but the fact is none the less true and practical, that, in order to compass this end, the scattered branches of the common stock must have a common name. This the old Greeks had. The Hellên remained a Hellên wherever he settled himself, and wherever he settled himself the land on which he settled became Hellas. The Greek of Attica or Peloponnêsos did not distinguish himself from the Greek of Spain by calling himself a Greek and his distant kinsman a Spaniard. But it is hard to find a name fitted in modern usage to take in all the scattered branches of the English folk. A certain class of orators on both sides of Ocean would seem to have dived into the charters of the tenth and eleventh centuries, and to have hence fished up the antiquated name of "Anglo-Saxon." We hear much big talk about the "Anglo-Saxon *race*," somewhat to the wrong of that greater Teutonic body of which Angles and Saxons are fellow-members with many others. But those who use the name probably attach no particular meaning to it; to them it goes along with such modern creations as Anglo-Normans, Anglo-Indians, Anglo-Catholics. The very narrow historical sense of the word "Anglo-Saxon" is never thought of. It is not remembered that its use was to mark the union of Angles and Saxons under one king, a use which naturally was forgotten as the distinction between Angles and Saxons was forgotten. Anyhow the name is antiquated and affected; it is not the name which most naturally springs to any man's lips: it is a name artificially devised to answer a certain purpose. For the Englishman of Britain and the Englishman of America to greet one another as "Anglo-Saxons" is very much as if the Greek of

Peloponnêsos and the Greek of Spain had greeted one another, not as Hellênes, but as Danaans or Pelasgians. Yet there certainly is a difficulty, such as the Greek never felt, in their greeting one another by their true name of Englishmen. . . . .

In England I have ever preached the lesson "antiquam exquirite matrem," while in America I have, at the expense of meter, preached it in the shape of "antiquiorem exquirite matrem." I am not likely to forget that if the English settlements in America are colonies of the English settlements in Britain, so the English settlements in Britain are themselves colonies of the older English land on the European mainland. In the wider history of the three Englands no fact is of greater moment; it is in fact the kernel, almost the essence, of their whole history. Still the constant acknowledgment and carrying about of that fact is a kind of counsel of perfection which every one cannot be expected to bear in mind. The analogy between the European and American settlements is real, but it is hidden. The points of unlikeness lie on the surface. The far longer time of separation between the first England and the second, the consequences following on that longer separation, above all the far wider break in the matter of language and institutions—to say nothing of the wide diversity in date and circumstances between the settlements of the sixth century and the settlements of the seventeenth—all these things join together to make the relations between the first England and the second altogether unlike the relations between the second England and the third. The oldest England on the European continent should never be forgotten by the men of the middle England in the isle of Britain. But it never can be to them all that the middle England in the isle of Britain surely ought to be to the men of the newest England on the mainland of America.

The main ties between the motherland and her great colony are the two main results of community of stock; that is, community of language and community of law. . . . . It is pleasant to see an American law library, with English and American books side by side. It is pleasant to hear an American legal pleading, in which the older English legislation, the older English decisions, are dealt with as no less binding than the legislation and decisions of the local courts and assemblies, and where the English legisla-

tion and decisions of later times are held to be, though not formally binding, yet entitled to no small respect. As to outward appearances indeed, most of the American courts have lost the pomp and circumstance with which we are accustomed to clothe the administration of the higher justice at home. It is only in that great tribunal which can sit in judgment on the legislation of a nation, in the Supreme Court of the United States, that any trace is left of the outward majesty of the law as it is understood in England. But look at any American Court, in such States at least as I have visited, and we see that the real life of English law and English justice is there. All the essential principles, all the essential forms, are there. The very cry of *oyez*, meaningless most likely in the mouth of the crier who utters it, not only tells us that it is the law of England which is administering, but reminds us how largely the older law of England was recast—not more than recast—at the hands of the Norman and the Angevin. We feel that the law which is laid down by the banks of the Hudson or the Potomac is still the law of King Edward with the amendments of King William. Sometimes indeed, when we find the newer England cleaving to cumbrous tradition which the elder England has cast away, we feel that a few further amendments of later days would not be out of place. . . . . .

I am not forgetful that the laws of different States are very far from being everywhere the same, and that the legislation of some States has brought in some startling differences from the legislation both of England and of other States. But we may still carry on our eleventh century formula. The law is not a new law; it is the old law, with certain—perhaps very considerable—amendments. Even if it be held that a new superstructure has been built up, it has been built up upon an old groundwork. Here there is a tie, not only to the mother-country, but to an old side of the mother-country. A real American lawyer must be an English lawyer too. He cannot fail to know something of the history of the land whose laws it becomes his duty to master; he may know at least as much as the English lawyer himself condescends to know. And I can witness that there are American lawyers who go somewhat further than the ordinary English lawyer thinks it his business to go. If a good many are still floun-

dering in the quagmire of Blackstone, there are some who have made their way to the firm ground of Stubbs and Maine.

The nature of Blackstone suggests a state of mind which I certainly cannot call an American peculiarity, which it may be going too far to call even an American characteristic. For the state of mind of which I speak, though it was brought forcibly to my notice on the other side of Ocean, is only too common in England also, and in many parts besides. I remember years ago acting as Examiner at Oxford with a man who, whatever may have been his attainments as a lawyer, had certainly made a good deal of money at the bar. He made the men who were examined say that the Conqueror introduced the feudal system at the great Council of Salisbury. I implored him to say nothing of the kind, and explained to him that the legislation of Salisbury was the exact opposite to what he fancied. My colleague refused to hearken; he had to examine in law; Blackstone was the great oracle of the law; Blackstone put the matter as he put it, and he could not go beyond Blackstone. This is an extreme case of a man who cannot get beyond his modern book, and to whom the notion of an original authority is something which never came into his head. I believe there is in all parts of the world a large class of people into whose heads it never does come that history is written from original sources. I have had talks with people, and have received letters from people, who clearly thought that I or any other writer of history did it all from some kind of intuition or revelation, who had no idea that we got our knowledge by turning over this book and that. And I have known others who have got beyond this stage, who know that we get our knowledge from earlier writings, but who fancy that these earlier writings are something altogether strange and rare, the exclusive possession of a certain class, and placed altogether out of the reach of any but members of that class. They are amazed if you tell them that for large parts of history, for all those parts with which I am mainly concerned, the sources lie open to every man, and that the only advantage which the professed historian has is the greater skill which long practice may be supposed to have given him in the art of using the sources. Now this state of mind, one which practically does not know that there are any sources, common enough in England, is commoner still in America.

There, if we except a small body of scholars of the first rank, original sources seem to be practically unknown. It struck me that, with regard to reading and knowledge—at least in those branches of which I can judge—America stands to England very much as England stands to Germany. I conceive that in Germany the proportion of those who know something is smaller than it is in England, while the proportion of those who know a great deal is certainly larger. Anyhow this distinction is perfectly true between England and America. There is a mysterious being called the "general reader," of whom some editors seem to live in deadly fear. Now I had long suspected that the "general reader" was not so great a fool as the editors seemed to think, and my American experience has confirmed that suspicion. America strikes me as the land of the "general reader;" and, if so, I am not at all disposed to think scorn of the "general reader." It seemed to me that in America the reading class, the class of those who read widely, who read, as far as they go, intelligently, but who do not read deeply—the class of those who, without being professed scholars, read enough and know enough to be quite worth talking to—form a larger proportion of mankind in America than they do in England. On the other hand, the class of those who read really deeply, the class of professed scholars, is certainly much smaller in proportion in America than it is in England. The class exists; it numbers some who have done thoroughly good work, and others from whom thoroughly good work may be looked for; but it sometimes fails to show itself where one might most have expected to find it. Men from whose position one might have expected something more seem hardly to have grasped the conception of original authorities. One sees college library after college library which does not contain a volume of the Chronicles and Memorials, where the existence of that great series seems to be unknown. I met men who admired Dr. Stubbs as they ought to do, who had read his Constitutional History carefully, but who had never so much as heard of those wonderful prefaces, those living pictures of men and times, on which, even more than on the Constitutional History, the fame of the great Professor must rest. How little some men, even in the chair of the teacher, have grasped the nature of the materials for historic study came out in a curious dialogue which

I had with an American professor, I think a professor of history. He asked me, "Where do you write your works?" "In my own house, to be sure," I answered, "where else should I?" "O but you can't do them in your own house; you can't have the rare books and the curious manuscripts; you must be always going to the British Museum." He was a good deal amazed when I explained to him that all the important books for my period were printed, that I had them all around me in my own not wonderfully large library, that it was the rarest thing for me in writing my history to need a book that was not in my library, that I had never in my life made use of the British Museum library, and not very often of the Bodleian itself—that, for a few unprinted manuscripts which I knew would be of use to me the British Museum would give me no help, as they did not happen to be there—that, as a mere affair of the pocket, it was cheaper as well as more convenient to buy books for oneself than to take long journeys in order to read other people's books elsewhere. All this seemed altogether a new light to my friend. Of course a student of some other periods could not have made the same answer that I did. There are times for which the library of the British Museum or any other public library, must be invaluable, but those times are not the eleventh and twelfth centuries. But it is plain that to my professor all centuries were much alike; he knew that there were such things as original sources, but they seemed to him to be something strange, mysterious, and inaccessible, something of which a private man could not hope to be the owner. That a man could have the Chronicles and Florence and Oderic lying on his table as naturally as he might have Cæsar and Tacitus had never come into his head. I heard a good deal in America of the difficulty of getting books, which I did not quite understand. It is surely as easy to get a book, whether from London or from Leipzig, in America as it is in England; the book simply takes somewhat longer to come. But I can understand that American scholars may keenly feel one difficulty which I feel very keenly too. This is the utter hopelessness of keeping up with the ever-growing mass of German books, and yet more with the vaster mass of treatises which are hidden in German periodicals and local transactions. Of all of these every German scholar expects us all to be masters, while to most of us they are practically as

inaccessible as if they were shut up in the archives of the Vatican. When a German, and yet more when a Swiss, scholar gets any fresh light, his first impulse is carefully to hide it under a bushel, and then he expects all mankind to enter in and see the darkness.

I think I may fairly say that the state of things of which I speak, not so much mere ignorance of original sources as failure to grasp the existence and the nature of original sources, while sadly rife in England, is yet more rife in America. But I need hardly say that America has men of sound learning in various branches of knowledge of whom no land need be ashamed. At Harvard, at Yale, at Cornell, the most fastidious in the choice of intellectual society may be well satisfied with his companions. And there is a younger school of American scholarship growing up, of which, and of its researches, I cannot help saying a few words more directly. Students of early English history and language have had of late to acknowledge much valuable help in several shapes from the western branch of their people. But the school of which I have to speak is one which, among its other merits, has the special merit of being distinctively American, of being the natural and wholesome fruit of American soil. Its researches have taken that special direction which one might say that American research was called upon to take before all others. The new school is the natural complement of an elder school which has been useful in its time, but which could at the utmost serve only as the pioneer toward something higher.

Even from the days before independence, the English colonies in America have never lacked local historians. Every State, every district, almost every township, has found its chronicler. And worthily so; for every State, every district, every township, has its history. In New England above all, the history of even the smallest community has some political instruction to give us. The history of New England is a history of exactly the same kind as the history of old Greece or of mediæval Switzerland, the history of a great number of small communities, each full of political life, most of them reproducing ancient forms of Teutonic political life, which have died out in the elder England and which live only among the lakes and mountains of the elder Switzerland. The institutions of any community in the Thirteen Colo-

nies, above all of any community in New England, are more than a mere object of local interest and curiosity. They show us the institutions of the elder England, neither slavishly carried on nor scornfully cast aside, but reproduced with such changes as changed circumstances called for, and those for the most part changes in the direction of earlier times. As many of the best reforms in our own land have been—often unwittingly, and when unwittingly all the better—simply falling back on the laws and customs of earlier times, so it has specially been with the reforms which were needed when the New England arose on the western shore of Ocean. The old Teutonic assembly, rather the old Aryan assembly, which had not long died out in the Frisian sea-lands, which still lived on in the Swabian mountain-lands, rose again to full life in the New England town-meeting. Here we have, supplied by the New England States, a direct contribution, and one of the most valuable of contributions, to the general history of Teutonic political life, and thereby to the general history of common Aryan political life. And other parts of the Union also, though their contributions are on the whole of less interest than those of New England, have something to add to the common stock. Each of the colonies reproduced some features of English life; but different colonies reproduced different sides and, so to speak, different dates of English life. All these points in the local history of the colonies need to be put in their right relation to one another and to other English, other Teutonic, other Aryan institutions. This would seem to be a study to which the scholars of the United States are specially called. The study of institutions, the scientific exposition of what America has to teach us on that head, has been taken up by those who have come in the wake of the older school of American inquirers. On the more homely researches of the local chronicler there naturally follows a newer and more advanced class of inquirers, men who not only collect facts, but who know how to put the facts which they collect into their proper place in the general history of mankind. I have hitherto abstained from mentioning names; it is often invidious to pick and choose, and some of those whom I have had in my eye may claim the benefit of the proverb that good wine needs no bush. But a young and growing school, which still has difficulties to struggle against, may be glad of a good word on

either side of Ocean. I cannot help mentioning the school which is now devoting itself to the special study of local institutions, a school which is spread over various parts of the Union, but which seems to have its special home in the Johns Hopkins University at Baltimore. . . . .

To trace out the local institutions, and generally the local history of their own land, to compare them with the history and institutions of elder lands, to show that it is only on the surface that their own land lacks the charm of antiquity, is the work which seems chalked out for the inquirers of this school, and a noble and patriotic work it is. An eye accustomed to trace the likenesses and unlikenesses of history will rejoice to see the Germans of Tacitus live once more in the popular gatherings of New England—to see in the strong life of Rhode Island a new Appenzell beyond the Ocean—to see the Great City of Arcadia rise again in the federal capital by the Potomac. North and South, and the older West also, has each its help to give, and materials to furnish. Viewed rightly, with the eye of general history, it is no mean place in the annals of the world that falls to the lot of the two great commonwealths between which the earliest, and till our own days the greatest presidencies of the American Union were so unequally divided. . . . . .

I said before that it is a witness to the life and strength of the true English kernel in the United States that, notwithstanding the lavish admission of men of all kinds to citizenship, that English kernel still remains the kernel round which everything grows and to which everything else assimilates itself. There is that kind of difference between the English in Britain and the English in America which could not fail to be under the different circumstances of the two branches. Each of them is the common forefather of earlier times modified as the several positions of his several descendants could not fail to modify him. In constitutional matters the closeness with which the daughter has, wherever it was possible, reproduced the parent is shown perhaps in the most remarkable way in the prevalence alike in the Union, in the States, and in many at least of the cities, of the system of two houses in a legislative body. We are so familiar with that system from its repetition in countless later constitutions that we are apt to forget that, when the Federal constitution of the United States was drawn up, that

system was by no means the rule, and that its adoption in the United States was a very remarkable instance of cleaving to the institutions of the mother country. Though the United States Senate, the representative of the separate being and the political equality of the States, has some functions quite different from those of the House of Lords, yet it would hardly have come into the heads of constitution-makers who were not familiar with the House of Lords. I may here quote the remark of an acute American friend that the Senate is as superior to the House of Lords as the House of Representatives is inferior to the House of Commons. A neat epigram of this kind is seldom literally true; but this one undoubtedly has some truth in it. It follows almost necessarily from the difference between the British and American constitutions that in the American Congress the Upper House should be, in character and public estimation, really the Upper House. In Great Britain no statesman of the first rank and in the vigor of life has any temptation to exchange the House of Commons for the House of Lords. By so doing he would leave an assembly of greater practical authority for one of much less. But in the United States such a statesman has every temptation to leave the House of Representatives for the Senate as soon as he can. As neither House can directly overthrow a Government in the way that the House of Commons can in England, while the Senate has a share in various acts of the executive power with which the House of Representatives has nothing to do, the Senate is really the assembly of greater authority. Its members, chosen for six years by the State Legislatures, while the Representatives are chosen by the people for two years, have every advantage as to the tenure of their seats, and it is not wonderful to find that re-election is far more the rule in the Senate than in the House. I had to explain more than once that it was a rare thing in England for a member of Parliament to lose his seat, unless he had given some offense to his own party or unless the other party had grown strong enough to bring in a man of its own. In America, it seems, it is not uncommon for a Representative to be dismissed by his constituents of his own party, simply because it is thought that he has sat long enough and because another man would like the place. Here the difference between paid and unpaid members comes in: where members are paid, there will naturally be a

larger stock of candidates to choose from. I was present at sittings of both Houses, and there was certainly a most marked difference in point of order and decorum between the two. The Senate seemed to be truly a Senate; the House of Representatives struck me as a scene of mere hubbub rather than of real debate. One incident specially struck me as illustrating the constitutional provision which shuts out the Ministers of the President from Congress. One Representative made a fierce attack on the Secretary of the Navy, and the Secretary of the Navy was not there to defend himself. Generally I should say, the House of Representatives and the Legislative bodies which answer to it in the several States, illustrate Lord Macaulay's saying about the necessity of a Ministry to keep a Parliament in order. One result is the far larger powers which in these assemblies are given to the Speaker. And these are again attended by the danger of turning the Speaker himself into the instrument of a party.

The differences of procedure between our Houses of Parliament and the American assemblies, Federal and State, are very curious and interesting, specially just now when the question of Parliamentary procedure has taken to itself so much attention. But I must hasten on to give my impression of other matters, rather than attempt to enlarge on a point which I cannot say that I have specially studied. The State legislatures are the features of American political life which are most distinctive of the federal system, and to which there cannot be anything exactly answering among ourselves. It must always be remembered that a State legislature does not answer to a town council or a court of quarter sessions. It is essentially a parliament, though a parliament with limited functions and which can never be called on to deal with the highest questions of all. Still the range of the State legislatures is positively very wide, and takes in most things which concern the daily affairs of mankind. A large part of their business seems commonly to consist in the passing of private bills, acts of incorporation and the like. Some States seem to have found that constant legislation on such matters was not needed, and have therefore thought good that their legislatures should meet only every other year. In Pennsylvania, therefore, where I had good opportunities of studying some other matters, I had no

opportunities of studying the working of a State legislature. When I was there, municipal life was in full vigor in Philadelphia, but State life was dead at Harrisburg. But I came in for a sight of the legislature of New York at the time of the "dead lock" early this year. For week after week the Lower House found it impossible to elect a Speaker. And this was not the result of absolute equality between the two great parties. It was because a very small body of men, who had no chance of carrying a candidate from among themselves, thought fit, in ballot after ballot, to hinder the election of the acknowledged candidate of either side. This illustrates the result of the rule which requires an absolute majority. I pointed out to several friends on the spot that no such dead lock could have happened in the British House of Commons. I know not how far the existence of a regular Ministry and Opposition would hinder the possibility of this particular kind of scandal; but it is hard to conceive the existence of a ministry in our sense in a State constitution. Even in our still dependent colonies the reproduction of our system of ministries going in and out in consequence of a parliamentary vote, may be thought to be somewhat out of place. Still the Governor, named by an external power, has much of the position of a king, and his relations to his ministry and his parliament can in a manner reproduce those of the sovereign in the mother-country. But it is hard to conceive an elective Governor, above all the Governor of such a state as Rhode Island or Delaware, working through the conventionalities of a responsible ministry. Indeed even in such a state as New York there is still something patriarchal about the office of Governor. While I was in the Capitol at Albany, the friends of a condemned criminal came to plead with the Governor in person for the exercise of his prerogative of mercy. Now the population of the State of New York, swelled by one overgrown city, is greater than that of Ireland; even in its natural state, it would be much greater than that of Scotland. I thought of the days when the King did sit in the gate.

The personal heads of the Union, the State, and the City, the President, the Governor, the Mayor, all come from English tradition. If we study the commonwealths of other ages and countries, we shall see that this great position given to a single man,

though by no means without precedent, is by no means the rule. The title of Governor especially is directly handed on from the days before independence. It would hardly have suggested itself to the founders of commonwealths which had not been used to the Governor sent by the King. The powers of the Governor and the duration of his office differ widely in different States, even in neighboring and closely kindred States. The Governor of Massachusetts still keeps up a good deal of dignity, while the Governor of Connecticut is a much smaller person. Yet the Governor of Connecticut holds office for a longer time than his brother of Massachusetts. The Mayor too does not hold exactly the same place in every city. At Brooklyn, when I was there, a great point in the way of reform was held to have been won by greatly enlarging the powers of the Mayor. Men who could well judge held that purity of administration was best attained by vesting large powers in single persons, elective, responsible, acting under the eye of the public. And I was told that, even in the worst cases, better results come from the election of single officers than from the election of larger numbers. The popular election of Judges, which has been introduced into many States, is one of the things which British opinion would be most united in condemning. We should all agree in wishing that both the Federal courts and the courts of those States which, like Massachusetts, cleave to older modes of appointment may stay as they are. But, from what I could hear both in New York and other States which have adopted the elective system, the results are better than might have been expected. Each party, it is said, makes it a point of honor to name fairly competent candidates for the judicial office. So again the municipal administration of New York city was for years a by-word, and the name of Alderman was anything but a name of honor. But even in the worst times, the post of Mayor was almost always respectably filled. Even, so I was told, in one case where the previous record of the elected Mayor was notoriously bad, his conduct in office was not to be blamed. . . . .

I was greatly interested in the municipal election which I saw at Philadelphia early this year. The municipal administration of that city has, like that of New York, long had a bad name.

Corruption, jobbery, the rule of rings and "bosses," and above all, what to us sounds odd, the corrupt administration of the Gas Trust, were loudly complained of. And I certainly am greatly deceived if what I saw and studied was anything but a vigorous and honest effort to bring in a better state of things. Republicans and Democrats brought themselves to forget their party differences; or rather party names, and to work together for the welfare and honor of their common city. The movement was described to me in a way at which I have already hinted, as an union of honest men of both parties against the rogues of both parties. And such, as far as I could judge, it really was. I did indeed hear it whispered that such fits of virtue were not uncommon, both in Philadelphia and elsewhere, that they wrought some small measure of reform for a year or two, but that in order to keep the ground that had been gained, a continuous effort was needed which men were not willing to make, and that things fell back into their old corrupt state. And it is certainly plain that the man who gains by maintaining corruption is likely to make great habitual efforts to keep up a corrupt system, while the man who opposes it, who gains nothing by opposing it, but who gives up his time, his quiet, and his ordinary business, for the public good, is tempted at every moment to relax his efforts. This failure of continued energy is just what Demosthenes complains of in the Athenians of his day; and experience does seem to show that here is a weak side of democratic government. To keep up under a popular system an administration at once pure and vigorous, does call for constant efforts on the part of each citizen which it needs some self-sacrifice to make. The old saying that what is everybody's business is nobody's business becomes true as regards the sounder part of the community. But it follows next that what is everybody's business becomes specially the business of those whose business one would least wish it to be. Yet my Philadelphian friends assured me that they had been steadily at work for ten years, that they had made some way every year, but that this year they had made more way than they had ever made before. The immediate business was to dislodge "bosses" and other corrupt persons from the municipal councils, and to put in their stead men of character and ability, whether Republican or Democratic in politics. And this object, surely one much to be

sought for, was, as far as I could see, largely accomplished. I did indeed hear the murmurs of one or two stern Republicans, who could not understand supporting a list which contained any Democratic names. But the other view seemed to be the popular one. I read much of the fugitive election literature, and attended one of the chief ward-meetings. I was greatly struck by the general hearty enthusiasm in what was not a party struggle, but an honest effort for something above party. The speaking was vigorous, straightforward, often in its way eloquent. It was somewhat more personal than we are used to in England, even at an election. But here again my comparison is perhaps not a fair one. As I before said, I know nothing of English municipal elections, and the Philadelphian reformers had to deal with evils which have no parallel in the broader walks of English political life. Whatever may be our side in politics, we have no reason to suspect our opponents of directly filling their pockets at the public cost.

A municipal election is of more importance in America than it is in England, because of the large powers, amounting to powers of local legislation, which are vested in the cities. This would seem to be the natural tendency of a Federal system. It would indeed be inaccurate to say that the City is to the State what the State is to the Union. For the powers of the city may of course be modified by an act of the State Legislature, just as the powers of an English municipal corporation may be modified by an Act of Parliament, while no mere act of Congress, nothing short of a constitutional amendment, can touch the powers of a Sovereign State. But it is natural for a member of an Union, keeping independent powers by right, to allow to the members of its own body a large amount of local independence, held not of right but of grant. An American city is more thoroughly a commonwealth, it has more of the feelings of a commonwealth, than an English city has. As for the use of the name, we must remember that in the United States every corporate town is called a "city," while, in some States at least, what we should call a market-town bears the legal style of "village." In New England the cities are interlopers. They have largely obscured the older constitution of the *towns*. The word *town* in New England does not, as with us, mean a collection of houses, perhaps

forming a political community, perhaps not. It means a certain space of the earth's surface, which may or may not contain a town in our sense, but whose inhabitants form a political community in either case. Its assembly is the town meeting, the survival, or rather revival, of the old Teutonic assembly on the soil of the third England. This primitive institution best keeps its ancient character in the country districts and among the smaller towns in our sense of the word. Where a "city" has been incorporated, the ancient constitution has lost much of its importance. It has not been abolished. In some cases at least the two constitutions, of town and city, the Teutonic primary assembly and the later system of representative bodies, go on side by side in the same place. Each has its own range of subjects; but it is the tendency of the newer institution to overshadow the older. I deeply regret that I left America without seeing a New England town-meeting with my own eyes. It was a thing which I had specially wished to see, if only in order to compare it with what I had seen in past years in Uri and Appenzell. But when I was first in New England, it was the wrong time of the year, and my second visit was very short. I thus unavoidably lost a very favorable chance of seeing what I conceived that the English parish vestry ought to be but is not. . . . . .

One of the points on which I have always tried to insist most strongly is the true historic connection between the constitutions of England and of the United States. It might be a good test of those who have and those who have not made comparative politics a scientific study to see whether they are most struck by the likenesses or the unlikenesses in the two systems. The close analogy in the apportionment of power among the elements of the state is a point of likeness of far more moment even than the difference in the form of the Executive, much more than that of the different constitution of the upper House. The American constitution, as I have rather made it my business to preach, is the English constitution with such changes—very great and important changes beyond doubt—as change of circumstances made needful. But as those circumstances have certainly not been changed back again, it is at least not likely that the constitution of America will ever be brought nearer than it now is to

the constitution of England, however likely it may be that the constitution of England may some day be brought nearer to the constitution of America. . . . .

To me the past history and the present condition of the United States is, before all things, a part of the general history of the Teutonic race, and specially of its English branch. Of that history the destiny, as far as it has already been worked out, of the American commonwealths forms no unimportant part. And their future destiny is undoubtedly the greatest problem in the long story of our race. The union on American soil of so much that is new and so much that is old, above all the unwitting preservation in the new land of so much that is really of the hoariest antiquity in the older world, the transfer of an old people with old institutions to an altogether new world, and that practically a boundless world, supply subjects for speculation deeper perhaps than any earlier stage of the history of our race could have supplied. Like all other human institutions, the political and social condition of the United States has its fair and its dark side; the Union, like all other human communities, must look for its trials, its ups and downs, in the course of its historic life. It has indeed had its full share of them already. The other members of the great family may well be proud that the newest, and in extent the vastest, among the independent settlements of their race, has borne, as it has borne, a strain as hard as any community of men was ever called on to go through. And we of the motherland may watch with special interest the fortunes of that branch of our own people on whom so great a calling has been laid. And truly we may rejoice that, with so much to draw them in other ways, that great people still remains in all essential points an English people, more English very often than they themselves know, more English, it may be, sometimes than the kinsfolk whom they left behind in their older home.

II

THE GERMANIC ORIGIN

OF

NEW ENGLAND TOWNS

"Si l'on veut lire l'admirable ouvrage de Tacite sur les moeurs des Germains, on verra que c'est d'eux que les Anglois ont tiré l'idée de leur gouvernement politique. Ce beau système a été trouvé dans les bois."—*Montesquieu.*

"Das Studium des Gemeindewesens in Amerika, dem Sie sich jetzt widmen, wird sicher sehr fruchtbar werden. In der Gemeinde ist die grosse Mehre der Bürger mehr als im State veranlasst, an öffentlichen Angelegenheiten und gemeinsamen Interessen zu betheiligen. Die Gemeinde ist überdem auch die Vorschule für den Stat. Der Bau der Republiken hat seine Grundlage in der Selbstständigkeit der Gemeinden."—*Bluntschli.*

"All New England is an aggregate of organized democracies. He that will understand the political character of New England must study the constitution of its towns, its schools, and its militia."—*Bancroft.*

"If you wish to see Old England, you must go to New England."—*Freeman.*

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

II

THE GERMANIC ORIGIN
OF
NEW ENGLAND TOWNS

Read before the Harvard Historical Society, May 9, 1881

BY HERBERT B. ADAMS, Ph. D.

With Notes on Co-operation in University Work

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THE GERMANIC ORIGIN

OF

NEW ENGLAND TOWNS.

THE reproduction of the town and parish systems of Old England under colonial conditions in America is one of the most curious and suggestive phenomena of American history. The process was so quiet, so unobtrusive, so gradual, so like the growth of vegetation in spring time—in short, so *natural*, that it seems to have escaped the notice of many historians of the larger colonial life. They have dealt with questions of church and state, with patents and charters, Pilgrims and Puritans, Baptists, Quakers, wars, witches, colonial unions and struggles for national independence, but the origin and growth of that smaller communal life within the colonies has been somewhat neglected. And yet these little communes were the germs of our state and national life. They gave the colonies all the strength which they ever enjoyed. It was the towns, parishes, and counties that furnished life-blood for church and state, for school and college, for war and peace. In New England especially, towns were the primordial cells of the body politic. In all the colonies, civic communities were the organic tissues, without which the colonial body would have been but a lifeless mass.

At the opening meeting of the American Association for the Advancement of Science, which met in Boston August 26, 1880, Mr. Lewis H. Morgan, in his inaugural address, paid the following tribute to the towns of New England: "Your Excellency, Governor of the Commonwealth of Massachusetts,

without intending to depart from the proprieties of the occasion, it may be proper to say that those of us who come from beyond the Hudson can but feel that in entering New England we reach the birthplace of American institutions. To some of us it is the land of our fathers, and we cannot approach the precincts of their departed presence without the sentiment of filial veneration. Here they laid broad and deep the foundations of American freedom, without which American science would have been an infant in leading-strings to-day. Here was developed the *township*, with its local self-government, the basis and central element of our political system. Upon the township was formed the county, composed of several towns similarly organized; the State composed of several counties, and, finally, the United States, composed of several states; each organization a body politic, with definite governing powers in a subordinate series. But the greatest of all, in intrinsic importance, was the township, because it was and is the unit of organization, and embodies the great principle of local self-government. It is at once the greatest and the most important of American institutions, because it determines the character of the State and National Government. It is also historically significant because it shows that American Democracy may justly claim to be the daughter of that Athenian Democracy which generated and produced the most signal outburst of genius and intellect in the entire history of the human race. Nor is this presage of the future without its own significance. What was achieved for philosophy and art under the free institutions of Athens may yet be achieved for science in the evolution of the same forces in America."*

Mr. Morgan's recognition of the historic significance of New England towns, in their relation to science and national growth, addressed as this recognition was to the chief magistrate of Massachusetts, recalled to mind the words of Gov-

* Report in Boston Journal, August 26, 1880.

ernor Long himself in an oration delivered in June, 1877, on the occasion of the one hundred and fiftieth anniversary of the founding of the town of Hanover, Massachusetts. His words give an inner view of the life and character of New England towns, a subject which Mr. Morgan viewed chiefly in its external relation to history and science. "I believe in our towns," said Mr. Long. "I believe in their decency and simple ways. I believe in their politics, in their form and administration of government, in their school and church influences, in their democratic society, in their temperance organizations, in their neighborly charities, in their proud lineage and history, and in the opportunities they offer. I know that our fathers who founded them and put their money and labor, and their hopes into the institutions and character of these towns, did not mean they should decay; that they should be abandoned, that any native born in them should turn his back upon them, or be prouder of a home elsewhere than in them. Their worth is not more in the things that are seen than in the things that are not seen; not more in the farm and shop and academy and railroad, than in the mellow, pious, soft, refining influences of character which pervades them like an atmosphere, and exhibits to you in humble cottages men and women plain in manner and dress, but of rare intelligence and refinement; men who think and read and are scholars and gentlemen, however humble their occupation; women who are poets and sisters of charity; where else do you find the like?"*

It would be easy to multiply eulogies of New England towns, but difficult to voice more clearly their intrinsic worth and far-reaching historic significance than have the men whose words have been quoted. Seen from within, these New England towns and villages are as full to-day of youthful freshness, quiet beauty, and energetic life as the demes of Grecian Attika, in the spring-time of the world; seen from without

* Report in Old Colony Memorial, Plymouth, Mass., June 21, 1877.

as an organic, deeply rooted, wide-expanding growth, New England's local institutions are like the tree Igdrasil, of Scandinavian mythology, for the principle of local self-government which they embody takes hold upon all the past and upholds the future in its spreading branches.

The importance of towns in the social and political structure of New England has been recognized in passing by discerning travellers like Lafayette and Tocqueville, and, indeed, by certain New England publicists and historians; but most of these notices have been extremely cursory and more or less inaccurate. There is also a vast number of local histories, but they generally avoid the one important question, the *genesis* of the town as an institution. Most writers, especially local historians, assume that New England towns are either the offspring of Puritan virtue and of the Congregational church, or else that they are the product of this rocky soil, which is supposed to produce free institutions spontaneously, as it does the arbutus and the oak, or fair women and brave men. But the science of Biology no longer favors the theory of spontaneous generation. Wherever organic life occurs there must have been some seed for that life. History should not be content with describing effects when it can explain causes. It is just as improbable that free local institutions should spring up without a germ along American shores as that English wheat should have grown here without planting. Town institutions were propagated in New England by old English and Germanic ideas, brought over by Pilgrims and Puritans, and as ready to take root in the free soil of America as would Egyptian grain which had been drying in a mummy-case for thousands of years.

The town and village life of New England is as truly the reproduction of Old English types as those again are reproductions of the village community system of the ancient Germans. Investigators into American Institutional History will turn as naturally to the mother country as the historians of England turn toward their older home beyond the German

Ocean. "For the fatherland of the English race," says Green in his History of the English People, "we must look far away from England itself. In the fifth century after the birth of Christ the one country which we know to have borne the name of Angeln or England lay within the district which is now called Sleswick, a district in the heart of the peninsula that parts the Baltic from the Northern seas. Its pleasant pastures, its black-timbered homesteads, its prim little townships looking down on inlets of purple water, were then but a wild waste of heather and sand, girt along the coast with a sunless woodland, broken here and there by meadows that crept down to the marshes and the sea. . . . Of the temper and life of the folk in this older England we know little. But from the glimpses that we catch of it when conquest had brought them to the shores of Britain their political and social organization must have been that of the German race to which they belonged. In their villages lay ready formed the social and political life which is round us in England to-day. A belt of forest or waste parted each from its fellow villages, and within this boundary or mark the 'township,' as the village was then called from the 'tun' or rough fence and trench * that served as its simple fortification, formed a complete and independent body, though linked by ties which were strengthening every day to the townships about it and the tribe of which it formed a part. . . .

"The woodland and pasture-land of an English village were still undivided, and every free villager had the right of turning into it his cattle and swine. The meadow-land lay in like manner open and undivided from hay-harvest to spring. It was only when grass began to grow afresh that the common meadow was fenced off into grass-fields, one for each household in the village; and when hay-harvest was

* According to the laws of the Colony of Massachusetts Bay, the boundaries of Massachusetts Towns were to be "a greate heape of stones, or a trench, of six foote long & two foote broade."—Mass. Col. Rec., ii, 210.

over fence and divisions were at an end again. The plow-land alone was permanently allotted in equal shares both of corn-land and fallow-land to the families of the freemen, though even the plow-land was subject to fresh division as the number of claimants grew greater or less. . . . The life, the sovereignty of the settlement resided solely in the body of the freemen whose holdings lay round the moot-hill or the sacred tree where the community met from time to time to deal out its own justice and to make its own laws. Here new settlers were admitted to the freedom of the township, and by-laws framed and headmen and tithing-man chosen for its governance. Here plow-land and meadow-land were shared in due lot among the villagers, and field and homestead passed from man to man by the delivery of a turf* cut from its soil. Here strife of farmer with farmer was settled according to the 'customs' of the township as its elder men stated them, and four men were chosen to follow headman or ealdorman to hundred-court or war. It is with reverence such as is stirred by the sight of the head-waters of some mighty river that one looks back to these village moots of Friesland or Sleswick. It was here that England learned to be a 'mother of Parliaments.' It was in these tiny knots of farmers that the men from whom Englishmen were to spring learned the worth of public opinion. . . . The 'talk' of the village moot . . . is the groundwork of English history." †

Thus, English historians, Green, Freeman, and Stubbs, recognize their older fatherland. The origin of the English Constitution, as Montesquieu long ago declared, is found in

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* The custom of conveying land by turf and twig, *ramo et cespite*, according to mediæval usage, was once known in Salem. In 1695, John Ruck granted a homestead to his son Thomas before witnesses, and, as part of the act of conveyancing, took hold of a twig in the garden, saying, "Here, son Thomas, I do, before these two men, give you possession of this land by turffe and twigg."—Felt, Annals of Salem, i, 187. Cf. Laveleye, Primitive Property, 121, note 3.

† Green, History of the English People, vol. i, ch. 1.

the forests of Germany. If we read, said this illustrious Frenchman, who was as fervent an admirer of England as Tocqueville was of America, if we read the admirable work of Tacitus concerning the manners and customs of the Teutons, we shall find that it was from them that the English derived their political system.* Voltaire was accustomed to ridicule Montesquieu for his Teutonic predilections, but the researches of Palgrave, Kemble, Stubbs and Sir Henry Maine have established the truth of this Germanic view. The tree of English liberty certainly roots in German soil. Proofs of this fact were first made fully apparent to English historians by the labors of those patient German specialists, Von Maurer, Hanssen, Meitzen, Nasse and George Waitz, who have shown in the early Constitutional History of Germany the same organizing power as Canon Stubbs has exercised in writing the Constitutional History of England. The amount of valuable details which German specialists in Institutional History have dug up from the rich soil of mediæval Germany is something marvellous to contemplate. To attempt even a résumé in a sketch of this character would be to attempt the impossible. But along the lines of this pioneer work, through guiding vistas of light now made in the German forests by years of German toil, the American student may wander at will, noting such points as may prove of suggestive interest to the younger Germany and the newer England on this side of the Atlantic.

The student has only to cross the river Neckar from Heidelberg to find himself in the Odenwald, or forest of Wodan, the most classic as well as the most primitive region in all Germany. The student has only to travel a few hours southward from the Odenwald and the Bergstrasse to reach the heart of the Black Forest. In either of these parts of Germany he can discover surviving features of the ancient village community system as described by Tacitus. With the Ger-

* Montesquieu, Esprit des Lois, Livre xi, ch. 6.

mania for a guide-book, let us follow the student through a Teutonic village. It is very generally known, says Tacitus, that the Germans do not live in cities, and also that they have no fondness for joining their plantations together. They settle apart in different places, according as spring, or open field, or woodland attracts their fancy. Villages they plant, not according to our fashion, with closely connected or adjoining buildings, but every man surrounds his own house with a fence, either for security against accident by fire, or because they are such bungling architects.*

There are two facts in this statement by Tacitus, which deserve special attention. The first fact is, that by the expression, "they settle apart in different places," *colunt discreti ac diversi*, is meant the individual farm or patriarchial hamlet, what the Germans call a Hof; the second fact is that by the expression, "villages they plant," *vicos locant*, is meant the village community, what the Germans call a Dorf. Tacitus probably saw what every stranger sees to this day on visiting the country villages of South Germany, namely, compact settlements, but with separate buildings and home lots, exactly like those of a New England farming town. Straggling hamlets, or isolated farms, there also must have been in the days of Tacitus as in the days of our Puritan forefathers. Doubtless many of these German hamlets grew into villages, just as the hamlets or villages of New England have in many cases grown into towns. The ending *heim* in many village names along the Bergstrasse, like Dossenheim, Weinheim, is clear indication of the original patriarchal character of such places. The German *heim* is the same as the English *home*, Saxon *hām*, which appears in the names of so many old English places like Doddingham, Billingham, Petersham, Hampton, (or Hometown), and the like. The distinction between the hamlet and the village is perhaps one of degree rather than one of kind. The Hof became the Dorf by a

* Tacitus, Germania, cap. xvi, (Baumstark's edition for Students, 58.)

natural process of development. No one can say where the hamlet ends and the village begins.

But let us proceed upon our tour of observation. The traveller of to-day will find in the interior of the Odenwald far more primitive villages than in the Black Forest. The latter is now traversed by government roads in every direction, and even a railroad has been constructed in these latter days, so that hurrying travellers can behold the scenery from the cars! Things are no longer what they were when Auerbach wrote his Black Forest Tales for children. But there is still much left to amuse and instruct the students who tramp through the Forest every Whitsuntide vacation (*Pfingsten*) from Heidelberg, Freiburg, and other German universities. The Odenwald is also visited, but not so frequently because it is more difficult in that primitive region to obtain food and drink, except upon one or two main routes. Traversing either the government chaussées or the common dirt roads through the Odenwald or Black Forest, the student may explore the numerous valleys and forest villages, which are to this day skirted with evergreen forests, dimly suggesting to his fancy the ambuscades into which the Roman legions fell when they penetrated the Teutoburger Wald. In such forests liberty was nurtured. Here dwelt the people Rome never could conquer. In these wild retreats the ancient Teutons met in council upon tribal matters of war and peace. Upon the forest hill-tops they worshipped Wodan, the All Father; in the forest valleys they talked over, in village-moot, the lowly affairs of husbandry and the management of their common fields. Here were planted the seeds of Parliamentary or Self-Government, of Commons and Congresses. Here lay the germs of religious reformations and of popular revolutions, the ideas which have formed Germany and Holland, England and New England, the *United States* in the broadest sense of that old Germanic institution.

What now are the external characteristics of one of these primitive forest-villages? Emerging from the wood or rocky

defile, the traveller comes suddenly upon a snug little settlement perched upon the sunny hillside or nestling in some broadening meadow. Surrounded by forest, this settlement is indeed a Mark, or, as Americans would say, a "clearing." Bædeker is here better than Tacitus, and you will discover that the place is called perhaps Schoenwald, or Beautiful Forest, or possibly Schoenau, or Beautiful Meadow. Such villages are usually planted near a brook or some constant stream, and frequently bear a name like Lauterbach. Names of localities derived from brooks, streams or rivers are familiar in New England. An ancient part of Salem, (that part which was the home of George Peabody, the philanthropist), was once known as Brooksby. These German villages are made up of little houses, separate from one another, but withal tolerably compact, with outlying fields divided into narrow strips, as shown by the growing crops. Let us enter one of these villages and see how the houses are constructed. The first impression is that they are rather rude and bungling. That is exactly what Tacitus thought when he saw their prototypes. Low-roofed and thatched with straw, which is held down perhaps by stones, with wide spreading eaves and rude wooden frame-work, filled in oftentimes with rough stones plastered together, these huts frequently remind the modern traveller of Swiss chalets. The inhabitants appear to live in the upper part of these one storied buildings, for there is a stone stair-case outside leading up to an elevated doorway, and underneath there is often a stable for cattle, although in some houses calves and children may be seen growing up together. Underneath the projecting roof at the gable ends of the houses are beehives of wicker work, upheld by a beam or shelf. If a stranger enters one of these forest villages on a day in June, he will hear nothing but the humming of the bees; for men, women and children are all in the hay-fields.

And this brings us to a consideration of that old system of co-operative husbandry and common fields, which are the

most peculiar features of a German village community. In the haying season, to this day, in many parts of Germany, the villagers may be seen gathering the grass-crop together. To this day, in some localities, the fallow and stubble lands are used in common by the whole village for the pasturage of cattle and the feeding of swine. Village cow-herds, swine-herds, and goose-herds are still employed in many parts of Germany. To this day the arable land of the Mark is tilled under certain communal laws. The time of harvesting and the time of allowing the cattle and swine of the village to enter upon the stubble lands is still determined by agreement among the inhabitants. The narrow, unfenced strips of land stretching up the hillsides to the forest-border, bear manifest evidence that they were originally formed by the allotment of some ancient common field.

In the *Contemporary Review*, July, 1881, there is a pleasant picture of village customs in the Thuringian forest by Professor W. Steadman Aldis, in an article entitled, "Notes from a German Village." The village described is Gross Tabarz, where the Professor spent a summer vacation with his family. "The economic state of the village, which is only a type of many others in the district, is decidedly primitive. Every well-to-do family has its little strip of ground, or sometimes several such strips have been accumulated in one family by inheritances or intermarriages. The village butcher, with whose family ours was soon on tolerably intimate terms, was the owner, or at least the cultivator with perpetual rights, of many little fields situated in almost as many parishes. . . . During the spring and summer, while the grass in the meadows is allowed to grow for hay, or for *Grummet*, as the second crop is called, the cows and geese are alike banished from the private land, and are taken under the charge of a *Hirt* on to the common land, the borders of the roads, or the small bits of mountain meadow among the forests not allotted by the *Gemeinde* to private owners. . . . After the second crop of hay has been all gathered in, which is supposed

to be achieved by the beginning of September, and for the gathering of which the village schools have a special holiday, the meadows are open to the cattle and geese of all the inhabitants, and the *Hirts* have no longer such an arduous task. The pasture land becomes again for the time the property of the Commune, the 'common land' which it originally was, and is dotted with red oxen or snow-white geese. During the months of July and August, the whole population, male and female, is for the most part occupied in getting in the crops of different kinds, which seem to form a continuous series, beginning with the first crop of hay, at the beginning of July, and ending with the *Grummet*, or second crop, early in September."

Let us now glance at our guide-book and see what Tacitus says concerning the customs of the ancient Germans in the matter of land holdings. Lands, he says, are taken up periodically by the whole body of cultivators in proportion to their number. These lands they afterwards divide up among themselves according to their dignity or title. The wide extent of open space renders the division of fields an easy matter. The situation of the plough-lands they change every year, and there is land enough left over. They do not attempt to improve by labor so vast and fertile a tract of ground, for the sake of planting orchards, laying out grass-plots, and irrigating gardens; the only crop they want is wheat or barley.*

In the custom, mentioned by Tacitus, of shifting the situation of the ploughed lands every year, we may perhaps see a germ of the famous Three Field System, which is of some importance in tracing the historical connection between the agrarian customs of England and those of ancient Germany. The system was probably in existence before the Saxon conquest of Britain, and has survived in both countries until our own times.

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* On the exposition of cap. xxvi of Tacitus' Germania, cf. Baumstark's edition, Nasse's Agricultural Community of the Middle Ages (Appendix), and Dr. Denman W. Ross' "Studies," i, 23; ii, 12.

Imagine a river valley, like that of the Neckar, which skirts the Odenwald, and a little stream flowing down from the hillside forest into the river below. In the Odenwald many villages are built along the line of such streams or brooklets, which serve as a kind of water main-street for the villagers living along the bank. The houses lie apart, as Tacitus says in his description of a German village, and every villager has his own house-lot and enclosure. The whole village domain is the Mark, or clearing. It belonged originally and belongs still to the village community as an organized body, as a civic unit. Certain parts, of course the best, were originally set off for tillage; other parts remained common for wood, pasture, and meadow, Wald, Weide, and Wiese. The Three Field System relates, however, not to the latter divisions, but to the arable land and to that only.

The land used for tillage was divided into three great fields, first, second, and third. Each villager had one or more lots in each great field, but the peculiarity of the system lies in the fact that every villager was obliged to plant his lot or lots in each great field, according as the whole village should determine. For example, if the proprietors, in village-mote assembled, should resolve by a majority to plant the first great field with wheat, an individual proprietor would have no alternative; he must do as his neighbors agree. And so of the second great field, which, perhaps, the villagers would vote to plant with oats or barley; and likewise of the third field, which must lie fallow for one year. A rude system of rotation of crops was customary in all Teutonic farming communities. The fallow land of one year was cultivated the year succeeding; and the spring crop of one field gave place to a winter crop, or else lay fallow in turn. The most interesting fact about this Three Field System is that it indicates a communal spirit even in the management of lands allotted and perhaps owned in severalty; it shows that the arable land as well as the pasture, meadow, and woodland, was under the control of the village community and subject to communal

decrees. There is reason to believe, from the passage in Tacitus above quoted, that the situation of the ploughed lands was changed from time to time, and that land devoted to tillage was afterwards turned into pasture or grass land, and other portions of the village domain were allotted for ploughing in severalty. The custom of re-distributing farming lands, after a certain term of years, was very general, not only in Teutonic, but in all Aryan villages. The term varied with different nations and in different communities. Originally, with the Germans, a fresh distribution was probably made every year, but as the Three Field System developed, the term became longer. In Russia, as Wallace has shown in his interesting work, lands were once re-distributed every thirteen years. The field meetings of Teutonic farmers for the distribution of lands and the regulation of crops were the germs of English parish meetings and of New England town meetings. The village elders, still so called in Russia, although young men are frequently elected to the office, are the prototype of the English Reeve and Four, and of the New England Town Constable and Board of Selectmen.

In the year 1871 was published, in England, under the auspices of the Cobden club, a translation of a little German treatise, by Professor Nasse,* of the University of Bonn, on the agricultural community of the middle ages and inclosures of the sixteenth century in England. It was a work which may be called epoch-making in the history of real property and of communal institutions in Great Britain. It awakened English lawyers to a consciousness of the survival in their very midst of a system of local land tenure older than the Feudal sytem and dating back at least to the time of the Saxon conquest of Britain. Ever since the days of Blackstone, lawyers had puzzled themselves to account for certain

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* First mentioned to American readers by Professor William F. Allen in *The Nation*, September 22, 1870, from a notice in Sybel's *Historische Zeitschrift*.

extraordinary customs of village land-holding in England, for certain phenomena of joint ownership in commons, like the lammas lands, which were common to an entire village for pasturage, after the 13th of August, old style, or like the so-called "shack lands," which, after the above date, were common to the owners or possessors, but not to the whole village. Lawyers had found no solution to the problem of the origin of such communal practice, except in special privileges granted to tenants by the lord of the manor, or else in immemorial custom.

Professor Nasse derived his facts concerning the existence of such communal land-holdings in England, from a report of a Select Committee on Commons Inclosure, instituted in order to frame laws for the dissolution of common holdings, by order of the House of Commons, 1844, and from the reports of the Board of Agriculture, about the beginning of the present century, under charge of Sir John Sinclair. These latter reports were abridged by Mr. Marshall, a man often referred to by Sir Henry Maine. It appears that Marshall, at this very early period was strongly impressed by the mere facts concerning the vast extent of communal land-holdings in England, and had come to the conclusion that once "the soil of nearly the whole of England was more or less in a commonable state." *

The reports above mentioned revealed some most remarkable facts concerning the survival of communal land-holdings in parishes where the Feudal system was supposed to have centralized all forms of folkland, and to have destroyed all free peasant proprietaries. In Huntingdonshire, out of 240,000 acres, 130,000 were found to be held in common, that is, by no individual owners in particular, but by village or farming communities, under the supremacy of some manorial lord.

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* Nasse on the Agricultural Community of the Middle Ages and Inclosures of the Sixteenth Century in England. London: Macmillan & Co., 1871.

In Wiltshire, by far the largest part of the land was thus held; in Berkshire, one half the county; in Warwickshire, 50,000 acres; and in Oxfordshire, over one hundred parishes held lands on the communal system; and in Northamptonshire eighty-nine parishes perpetuated this ancient type of village land-holding. Nasse says, "in by far the greater part of England the old English peasantry . . . held the land in common, precisely as the present villagers of the greater part of middle Europe hold theirs." *

There were found to be three sorts of commonable ground. 1, the arable; 2, meadow; and 3, pasture land. The arable land was found very generally to be subject to certain communal laws, in regard to the rotation or harvesting of crops. The Three Field System, as already described, was frequently discovered in English parishes, and it was also noticed that the three great divisions of arable land were often separated from one another by broad strips of grass land, which were kept common, in order to eke out the pasture in the fall of the year after the crops had been gathered and the stubble lands thrown open to the village cattle. The meadow lands were either held wholly in common, or by a system of shifting severalties, whereby grass-lots were assigned for the season to individuals, and were then again made common for pasturage and subject to a fresh distribution.† Community of pasturage was found to be of very general occurrence in the rural districts of England. There were two sorts, stinted pasturage, *i. e.*, where villagers were limited as to

* Nasse, 6, 9, cf. extract from Marshall, p. 100: "Each parish and township (at least in the more central and northern districts) comprised different descriptions of land, having been subjected during successive ages to specified modes of occupancy under ancient and strict regulations, which time had converted into law. These parochial arrangements, however, varied somewhat in the different districts, but in the more central, and greater part of the kingdom, not widely."

† This custom was maintained for years in the farming communities of Plymouth and Salem, Massachusetts.

the number of cattle they could pasture in the common field, (for example, it was often the rule that no one should pasture in common more stock than he could keep through the winter); and unstinted pasturage, where there was no such limit.

Such phenomena as these had been frequently observed in England and Scotland. Sir Walter Scott remarked such agricultural customs in the Orkney and Shetland islands, but was unable to explain them satisfactorily to himself. It was, as Sir Henry Maine says, by using Von Maurer's results as a key, that Nasse was able to decipher the whole system. The English Agricultural Community, of the Middle Ages, which survived the crushing weight of feudalism and has perpetuated itself down to our own times, stands forth as the historic survival of the Teutonic village with its Three Field System. Under the very heel of the Norman conqueror, the old communal spirit of the Saxons endured. It endured in the townships and parishes of England. It has endured upon almost every Lord's manor, where there was almost invariably a large tract of land known as the Common or Lord's Waste. Upon this tract, landless tenants preserved certain immemorial common rights, for example, to wood and turf, to grass and pasture. These rights were only vestiges of the ancient rights of Saxon villagers, but these rights to commonage serve as a connecting link between the manorial system of Mediæval England and the Village Community system of Ancient Germany. The periodical assignment of portions of the Lord's Waste for cultivation by the peasants was in the Court Leet (German *Leute*, people) or popular court of the Manor, in which court all minor matters relating to tenants were adjusted. In the customs of the Court Leet and of the old English Parish meeting, which is but the ecclesiastical outcome of old Saxon self-governing assemblies, is to be found the prototype of New England town meetings.

Nasse has truly observed that "agrarian relations have a tendency to a more lasting duration than other human insti-

tutions." * The extent of Common Lands in England, which have survived, not only Feudalism, but Parliamentary Acts for Commons Enclosure, is something enormous. The report of landowners, prepared by the Local Government Board a few years ago, shows that there are still over a million and a half acres of Common Land, † and the report of the Commons Preservation Society says that "five million acres of Common Land have been enclosed since Queen Anne's reign." Much of the land remaining unenclosed is called "Town Land" or "Commons;" it consists of great open spaces and public fields or heaths, upon which villagers pasture their cattle and boys play ball. Societies have been formed for the preservation of these tracts, especially when, like Hampstead Heath, they are in the vicinity of large cities. Essays on the advantage of "Open Spaces," and on the "Future of Our Commons," have appeared in the English reviews. Mr. Lefevre, in a letter to the Times, quoted by Octavia Hill, says: "The right of the public to use and enjoy Commons, (which they have for centuries exercised), it must be admitted, is not distinctly recognised by law, though there is a remarkable absence of adverse testimony on the subject. The law, however, most fully recognises the right of the village to its green, and allows the establishment of such right by evidence as to playing games, &c., but it has failed as yet to recognise the analogy between the great town and its Common, and the village and its green, however complete the analogy may be. But some of these rights of Common, which are now so prized as a means of keeping Commons open, had, if legal theory is correct, their origin centuries ago in custom. For long they had no legal existence, but the courts of law at last learned to recognise custom as conferring rights. The custom has altered in kind; in lieu of cattle, sheep, and pigs turned out to pasture on the Commons, human beings have

* Nasse, 13.

† Octavia Hill, "Our Common Land," 8.

taken their place, and wear down the turf instead of eating it."

We have seen how the Saxons transferred from ancient Germany to the eastern part of England the village community system and agrarian customs of their forefathers; let us now see how the dominant or communal idea of these villages and some of these old Teutonic practices in the matter of land-holding, were transferred across another and broader sea than the German ocean, and took root in the eastern parts of New England. States are not founded upon shipboard, though the vessel be as staunch as the Mayflower, and constitutions cannot be framed upon paper, though it be the Pilgrims' compact.

A band of Saxon pirates tossing upon the waves of the North Sea and preparing to descend upon the coasts of Britain could not constitute a State, in passage, however excellent their discipline, however faithful their allegiance to the authority of Hengist and Horsa. But those Saxon pirates bore with them a knowledge of self-government, which, when rooted in the soil of Britain, grew into Saxon England and the law of the land. Magna Charta and the Bill of Rights are only the development of those germs of liberty first planted in the communal customs of our Saxon forefathers. The Constitution of England is not written at all; it is simply a rich but sturdy growth of popular institutions, derived originally from the forests of Germany, and transplanted across the sea. What is thus maintained and acknowledged concerning our Saxon forefathers, may likewise be urged concerning the Pilgrim fathers. They were merely one branch of the great Teutonic race, a single offshoot from the tree of liberty which takes deep hold upon all the past. This offshoot was transplanted to Plymouth, and it grew up, not like Lebanon, filling the whole earth, but, to all appearances, like the first Saxon settlements of England and like other forms of local self-government, budding, spreading, and propagating after its kind.

The importance of the territorial factor in the constitution of Plymouth Colony has never been sufficiently emphasized. The personal factor, *i. e.*, the character, the virtues, and the religious zeal of the Pilgrims do not need to be further extolled. Americans are in no danger of forgetting the faith and heroism of those men and women who made their flight in winter across a barren sea to preserve the rights of conscience, the rights of Englishmen, and good old English ways; but Americans, in their enthusiasm for *men*, have failed to notice certain important and fundamental *things* in the origin of Plymouth. Underneath all the phenomena of Pilgrim zeal and suffering, more enduring than the Pilgrims' noble compact, unnoticed like the upholding power of earth, lies the primordial fact of the local settlement of the Pilgrims in a form of civic community older than Saxon England, older than the primitive church, and older than the classic states of antiquity. That form of civil community was based upon land.

The elements of permanence and continuity in all civil society are based upon the soil and the material interests connected with it. Generations of men are born and pass away, but an abiding relation to some fixed territory keeps civil society together and constitutes a state in the true sense of that term. Government may exist upon shipboard or among wandering tribes of Indians, but no state or body politic can possibly endure unless it be grounded upon territorial interests of a stable and lasting character. No state without a people, and no state without land. These are the axioms of political science.

Let us now inquire into the exact nature of the commonwealth which the Pilgrims actually founded. Mourt's relation, (so called from George Morton, who published it in England in 1622), a journal of the beginnings and proceedings of the English plantation settled at Plymouth in New England, a journal written, says Mr. Dexter, from day to day on the ground, gives us the best contemporary account of the

mode in which the first village republic in New England was planted. None of the so-called colony records go back to the foundation of the colony itself. But Mourt tells the whole story from the first landing, down to the town meeting of April 2, 1621, when Mr. John Carver was re-elected governor, being a man well approved.

"After our landing and viewing of the places as well as we could, we came to a conclusion, [December 30] by most voyces, to set on the maine Land, in the first place on a high ground where there is a great deale of Land cleared and hath beene planted with Corne three or four years agoe, and there is a very sweet brooke runnes vnder the hillside and many delicate springs of as good water as can be drunke, . . . Thursday, the 28. of December, [January 7, N. S.] so many as could went to worke on the hill where we purposed to build our platforme for our Ordinance, and which doth command all the plaine and the Bay, and from whence we may see farre into the sea, and might be easier impayled, having two rowes of houses and a faire street. So in the afternoon we went to measure out the grounds, and first, we tooke notice how many Families they were, willing all single men that had no wiues to ioyne with some Familie, as they thought fit, that so we might build fewer houses, which was done, and we reduced them to 19. Families; to greater Families we allotted larger plots, to euery person halfe a pole in breadth, and three in length, and so Lots were cast where euery man should lie, which was done, and staked out."—[Mourt's Relation, edited by H. M. Dexter, 64, 67, 68.]

On this tract of cleared land, or the village Mark, on the north side of the "very sweet brooke," which, like the springs spoken of by Tacitus, still attracted Teutonic fancy, and which is known to this day as the Town Brook, arose the first town or village community in New England. The first work was the construction of the so-called Common House, "about twenty foot square," says Bradford, "for their common use, to receive them and their goods." The land was taken pos-

session of as a communal domain, and the first labor bestowed upon it was communal labor. But the Pilgrims, like the ancient Teutons, knew well that a principle of individuality must enter into the development of communal life. Like the Teutons, the Pilgrims regarded the family as the unit of social order, and gave scope for family interests in the division of house-lots and in the construction of private dwellings. Like the Teutons again, the Pilgrims took up land in proportion to their number and immediate wants. Speaking of the size of the family allotments, the Journal says, "we thought this proportion was large enough at the first, for houses and gardens, to impale them around, considering the weakness of our people," etc. Here, too, by a curious chance, an old Teutonic idea appears in the notion of fencing and impaling. The radical idea of a town (from *Tun*, *Zun*, modern German *Zaun*, a hedge) is that of a place hedged-in, for the sake of protection.

"Tuesday the 9. January," [19th N. S.] continues the Journal, "was a reasonable faire day, and wee went to labour that day in the building of our towne, in two rowes of houses for more safety: we divided by lott the plot of ground whereon to build our Towne."

Professor Parker, in his paper read before the Massachusetts Historical Society on "The Origin, Organization, and Influence of the Towns of New England," * was condemning original sources when he criticised Mr. Baylies for using the word "Town" in his Historical Memoirs of New Plymouth as descriptive of the Plantation made in 1620. Baylies only paraphrased the quotation above made when he said the emigrants found "a high hill which could be fortified in a manner so as to command the surrounding country," and resolved "to lay out a town."

Palfrey, in his history of New England, says "the name town first occurs in the record of the second colonial meeting

* Proceedings of the Mass. Hist. Soc., Jan., 1866.

of the Court of Assistants, in connection with the naming (in 1630) of Boston, Charlestown, and Watertown."* This statement may have been intended to apply solely to the Massachusetts colony, but inasmuch as the author is calling attention to the "early origin" of New England Towns, it is but fair to note that the name "Town" occurs ten years earlier than 1630, and in the first records of Plymouth. And the word is frequently used in Young's Chronicles of the Pilgrim Fathers and in Plymouth Colony Records in such a clear sense that no one can possibly doubt but that Plymouth village communities had not only the name of "Town" but the actual thing, yes, the old Scandinavian *Thing*, the Saxon *Tun Gemot*, in their frequent Town Meetings. "There already—ay, in the Mayflower's cabin, before they set foot on shore," said Rufus Choate, "was representative government. . . . there already was the legalized and organized *town*, that seminary and central point, and exemplification of elementary democracy. . . . There was reverence of law,"† and upon this ancient Saxon basis, the Devonian rock of England, were founded the institutions of a new world.‡

The original idea of New England Towns, like that of their Old English and Germanic prototypes, was that of a village community of allied families, settled in close proximity

* Palfrey, History of New England, i. 380.

† Life and Writings of Rufus Choate, i. 285.

‡ In a monograph upon Plymouth Plantations will be shown the influence of English precedent upon Plymouth law and institutions. The ecclesiastical theory that "The Town corporation is the offspring of Puritan Congregationalism," asserted strangely enough in reference to Plymouth Colony (which was not Puritan but Separatist) by Dr. Joseph S. Clark, in his Historical Sketch of the Congregational Churches of Massachusetts, (p. 56), is entirely untenable, and so likewise is the theory of Professor Parker, Frothingham, and other writers, that the Town system is peculiarly the product of New England and not based upon precedent. There is scarcely a feature of New England Town Life which has not its prototype in the municipal history of the mother country. Studies illustrating this view have been made of the leading Town Institutions of Massachusetts.

for good neighborhood and defense, with homes and home lots fenced in and owned in severalty, but with a common Town Street and a Village Green or Home Pasture, and with common fields, allotted outside the Town for individual mowing and tillage but fenced in common, together with a vast surrounding tract of absolutely common and undivided land, used for pasture and woodland under communal regulations. It is important to observe that, historically speaking, the word "Town" applies more particularly to the village itself, and that the word "Township," which is of *very* common occurrence in the early local annals of New England, better characterizes the Town's landed domain. It is true that the latter term has fallen into disuse in New England, and fortunately so, for with the definite legal idea now attached to this word Township in the Western States, as a tract of land six miles square, the term no longer characterizes our Towns, which are far from being of any definite size or of any regular pattern. The word "Town" is now almost universally employed in New England to characterize the whole extent of the Town's domain, and properly, for almost everywhere population has swarmed from its old village-hive, and houses are now built from one end of the Town to the other. But it is curious to see how popular usage still clings to the old idea, when, for example, persons living at the "ends of the Town," talk about going "into Town," "into the village," or to the "centre." The idea of a Town is like that of the Greek ἄστυ in distinction from the πόλις; or the Latin *urbs* in distinction from *civitas*. This historical view is borne out by the definition of a "Town" given by President Dwight in his famous Travels in New England and New York, begun at the close of the last century, when he wrote, "You must remember that by a *Town* I all along intend a collection of houses in the original village, and not those of the township."

Let us turn now to an early description of the Town of Plymouth, written by Isaack de Rasieres, a French Protestant in the service of the Dutch West India Company as

Chief Commissary of New Netherlands (New York), who visited Plymouth in 1627 upon an embassy, and whom Governor Bradford called "a man of fair and genteel behavior." De Rasieres wrote concerning New Plymouth an interesting letter, which was discovered some years ago in the archives at the Hague * by John Romeyn Brodhead, Secretary of the American Legation at London. The letter was first printed in the Collections of the New York Historical Society. The following is a brief extract:

"New Plymouth lies on the slope of a hill stretching east towards the sea-coast, with a broad street about a cannon shot of eight hundred [yards] long, leading down the hill, with a [street] crossing in the middle, northwards to the rivulet, and southwards to the land. The houses are constructed of hewn planks, with gardens also enclosed behind and at the sides with hewn planks, so that their houses and court-yards are arranged in very good order, with a stockade against sudden attack; and at the ends of the streets there are three wooden gates." †

Town gates and stockades were very common in early New England villages, where they served not only for defense, but for agrarian and pastoral purposes. Upon the frontier, for example in the Connecticut valley, palisaded Towns were at one time a military necessity. The original idea of a Town reappears in the local records of Northampton, Hatfield, Deerfield, and Greenfield; for example, John Dickinson of Hatfield was allowed, by vote March 6, 1690, "liberty to remove his house into town" and retain his lot outside provided he do his share of fortifying and build again upon his lot when he could do so without fear of the Indians. "For many several years," says Judd in his manuscript collections

* The use of the article in the name of this Town, *the* Hague, German *der Haag*, French *la Haye*, is extremely interesting as an historical survival. Here is a developed Teutonic village called to this day *The Hedge*, just as the English word Town perpetuates the idea of the Saxon Tun.

† Collections of the New York Historical Society, New Series, vol. ii.

on Hatfield, "the inhabitants were cooped up within these limits. Many had huts or houses in the street." * In Greenfield it was voted on September 10, 1754 "to picquet three houses in this district immediately." Individual houses were frequently thus impaled, and it is not improbable that the use of picket fences to this day for separate inclosures in the rural districts may be a remote survival of that old Saxon

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*Judd, MS., Hadley and Hatfield, i, 148. The late Sylvester Judd, author of the History of Hadley, one of the best local histories ever written in New England, left behind him an extensive manuscript collection, in many bound volumes, of materials relating to the history of the Connecticut Valley, particularly of Northampton and of the towns in that environment. It is unfortunate for this latter Town, one of the richest and rarest in New England for historical interest, that so capable a man as Mr. Judd was never in position, by reason of his pressing duties as editor of a country paper, to write a history of the valley. But his manuscript treasures have now been purchased by public-spirited citizens, and it is to be hoped that this collection, which is really the corner-stone of Northampton history, may be the first acquisition of the Forbes Library, that recent munificent endowment of over two hundred thousand dollars by a late citizen of the Town for a free public library composed "of works of science and the arts, in their broadest acceptation, of ancient and modern history, and of the literatures of our own and other nations." (Extract from the Will of Judge Forbes.) The Forbes Library, the Clark Institute, Smith College and the Smith Charities are noble institutions, and yet they sprang, historically, from seed sown by those simple agrarian communities, Northampton and Hatfield, which are worthy of more than passing attention. The Town Records of Northampton, are of remarkable interest and full of cases of "survival." Secluded from association with the Bay Towns as were these inland communities of the Connecticut Valley, some of them like Windsor, Springfield and the Towns above, are really more interesting than many that lie farther to the eastward. These Valley Towns are not only quite as ancient as the average of seventeenth century Towns, but on the whole rather more conservative, less influenced even by Puritan innovations.

To the courtesy of the Judd Family and of Mr. J. R. Trumbull, the writer of this monograph has been indebted for the use of the Judd manuscripts at various intervals and for various purposes; also to Mr. Billings, Register of Deeds in the County of Hampshire, for access to early records of the county court and for copious extracts from the Town Records of Hatfield.

instinct for palisading every individual home and house-lot, as we have already seen in the case of Plymouth.

An interesting commentary on the relation of the individual home and hamlet to the Town or village community, similarly enclosed, is given in Nasse's Agricultural Community in the Middle Ages (15), where he says, "The names of places shows that, among the Saxons, only the dwelling-place — that is, house and homestead — was inclosed; the arable land and the pastures being open and unfenced. Out of 1,200 names of places which Leo collected from the first volume of Kemble's 'Codex Diplomat. Ævi Saxonici,' 187 were formed with tun. This word, it is well known, is identical with the modern 'town,' the Dutch tuin (garden), and the German zaun, and was, as R. Schmid remarks, less used by the Anglo-Saxons to signify 'that wherewith a space is inclosed, than the inclosed space itself.' We may, however, see very plainly that it was principally house and homestead which bore this name; for instance, in the laws of Alfred I. § 2, in cyninges tune; § 13, on eorles tune. Even at the present day the courtyard in the country in England is signified by the word town. Apparently, as was also the case in Germany, not only the individual homesteads, but also several situated near each other, were surrounded by an inclosure; which explains the reason why not only the homestead, but also the whole village was called 'tun.' In many places—for example in the laws of Athelstan II. Fr. § 2, where an expiatory fine is to be divided among the poor; as well as in Edgar IV. c. 8—the word 'tun' cannot be intended to be used for individual homesteads, but only for places, a signification which later became the ruling one." Nasse, in a footnote, 3, page 16, says, "the old Jute law prescribes (from 1240 A. D.) iii, chap. 57, *van thunen tho makende* (on making hedges) 'that every village shall be inclosed by a hedge,' and gives detailed rules for the duty of every villager to put up his part of the common fence which enclosed the whole village as well as single farmsteads."

A chapter might be written upon the survival in New England of this ancient institution known as the "Common Fence." The local records of every old New England Town are full of such references. Take the following from the MS. Records of Hatfield Side, January 14, 1660: "Agreed and voted at a side meeting [another case of Old English survival!] that there shall be a common fence made from Goodman Fellows to the landing place, every man fencing the end of his lot, and Isaac Graves to fence his part next to Goodman Bool's meadow lot, the rest to be done in common." May 11, 1663, "Agreed at a side meeting that every man shall set down a stake with the two first letters of his name by every parcel of fence by the 13th of this month." It would be difficult to say which is the more curious, the survival of "old Jute law," or this revival of old English usage. It has taken some time for hedgerows to find root again in New England, but Haywards, (not from hay, but from the Saxon *Hege*, wardens of the hedges,) Fence Viewers, and Field Drivers, were offices that our ancestors had probably filled in the old country, and they revived them here at once. Hatfield Side voted, May 7, 1662, "that the South Meadow should be cleared of cattle and Horses by Friday next, any cattle without Keeper, or with keeper on mowing ground shall pay 1 shilling each to him that brings them to the pound and 4 pence to the Pound Keeper." The Village Pound, which Sir Henry Maine* says is probably older than the Kingdom, was instituted at Hatfield before the Church, before the Town itself, when Hatfield was not yet a Parish of Hadley. This simple enclosure, the Cattle *Tun*, represents a communal idea which was growing in that little hamlet on the west side of the Connecticut river. Already while only the Pound,

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*Maine, Early History of Institutions, 263. He says, "there is no more ancient institution in the country than the Village Pound; it is older than the King's Bench and probably older than the kingdom." The name "Pound" is derived from the Saxon *pyndan*, to pen or enclose.

Common Meadows and Fences occupied the village mind it was voted "at side meeting that when there is a meeting legally warned, whoever shall not come shall forfeit 1 shilling, whoever shall come a half hour late, 6 pence, whoever shall depart before the close, 6 pence." Verily, here was a budding *Tun* within a Town.

The most striking indication of historic connection between the village communities of New England and those of the Old World lies in the sovereignty of the people, particularly in its agrarian laws.

Plymouth was not settled upon the principle of squatter sovereignty—every man for himself, but upon communal principles of the strictest character. These were not adopted simply because of the co-partnership of the Pilgrims with London merchants or chiefly through the influence of a spirit of Christian communism, though doubtless both of these motives had considerable weight in the early management of the colony. There are features of communal administration in the matter of landed property too peculiar and too closely resembling those elsewhere considered, in the case of the historical village community, to permit of any other satisfactory explanation than that of inherited Saxon customs. Land community was maintained too long at Plymouth and in the towns which were planted around Plymouth on the same communal principles, to be accounted for on any theory of a temporary partnership of seven years or on religious grounds.

Vestiges of the Old Germanic system of common fields are to be found in almost every ancient town in New England. In the town of Plymouth there are to this day some two hundred acres of Commons known as Town Lands. This tract is largely forest, where villagers sometimes help themselves to fuel in good old Teutonic fashion. In studying the territorial history of the Plymouth plantation, I have gathered many interesting materials concerning the perpetuation of land community in that region. It is impossible in this connection to enter into details. One or two concrete facts like

the following will illustrate the survival of land community in the region of Plymouth colony.

In the old town of Sandwich, upon Cape Cod, at the point where the ship canal was projected in 1880, there is a little parcel of land of 130 acres known as the Town Neck. This is owned by a company of twenty-four proprietors, the descendants or heirs of the first settlers of the town, and this tract is managed to this day as a common field. Originally the Town Neck, with other common lands, belonged to the whole town. In the MS. Town Records of Sandwich I find, under the date May 22, 1658, this vote: "If any inhabytant wanteth iand to plant, hee may have some in the Towne Neck, or in the Common for six yeare and noe longer." Later in 1678, April 6, townsmen are given liberty to improve Neck Lands "noe longer than ten yeares, . . . and then to be at the townsmen's ordering againe." In the year 1695, the use of the Town Neck was restricted to the heirs of original proprietors, and the land was staked out into thirty-eight lots. The lots were not fenced off, and the whole tract continued to lie as a common field, under the authority of the entire body of proprietors, like the arable lands of a German village community. In 1696, April 4, it was agreed that the Town Neck should be improved for the future by planting and sowing as a common field, until the major part of those interested should see cause otherwise to dispose or improve the same. The common fence was to be made up and a gate to be provided by the 1st of May. A field-driver or hayward was to keep the Town Neck clear of creatures and to impound for trespass. In 1700 it was voted that the Neck be cleared of creatures by the 16th of April, and that no part of the land be improved for tillage other than by sowing.

And thus from the latter half of the seventeenth century down to the present day have the proprietors of Sandwich Town Neck regulated the use of this old common field. Every year they have met together in the springtime to determine when the fences should be set up and how the pasture

should be stinted. The old Commoners' Records are for the most part still in existence as far back as the year 1693, and before this time the Town Records are full of agrarian legislation, for the Town Neck was then virtually town property. There arose in Sandwich and in every New England village community the same strife between old residents and new comers as that between the patricians and plebeians of ancient Rome; the old settlers claimed a monopoly of the public land and the new comers demanded a share. In most old New England towns, the heirs of original settlers or of citizens living in the community at a specified date retained a monopoly of the common lands for many years until finally compelled by force or public opinion to cede their claims to the town. In Sandwich, however, a vestige of the old system has survived to this day. Every spring, for many years, has appeared a public notice (I last saw one in the *Seaside Press*, May 8, 1880) calling together the proprietors of the Town Neck at some store in the village, to choose a moderator and a clerk, and to regulate the letting of cow rights for the ensuing year. I came on the track of this curious old common field one summer vacation in Provincetown, at the land's end of Cape Cod, where also and at Truro I found some interesting bits of fossil land tenure. I met in Provincetown a man who said he was taxed for one-sixth of a cow right in Sandwich, which he had inherited from his grandfather. I knew that a cow right meant a vestige of common pasture and so investigated the matter. In Sandwich I found the old Commoners' records extending back for nearly two centuries, in the possession of a farmer in whose family the clerkship had been for several generations. He said nobody had ever asked to see those records before, and with Arcadian simplicity allowed me to take the whole collection to my hotel for examination. I created quite an excitement in the place by reason of my inquiries, for it happened that just about that time the ship canal was under discussion in Sandwich, and the villagers concluded that I was examining into the title of

the proprietors to the Town Neck with a view to land speculation.

In the town of Salem also I have discovered very interesting survivals of the old English system of common fields. Originally, the whole region round about the first settlement was common land. The region of North Danvers and of the town of Peabody was once a part of Salem's communal domain. Winter Island long was, and Salem Neck still is, more or less common land. The outlying portions of Salem were gradually granted out to individuals with important reservations by the town in the interest of parish churches, for the poor and for the encouragement of certain public works, like the manufacture of glass, which was very early attempted by the thrifty Puritans as a business enterprise, like the manufacture of New England rum, although with less profit. There were for many years in the town of Salem certain common fields owned by associated proprietors just as in the case of the Sandwich Town Neck. Such were the North and South Fields in Salem. The old Commoners' records of the South Field are still preserved in the library of the Essex Institute, and date back as far as 1680. Under the date of October 14 of that year, I find the following: Voted, that the proprietors have liberty to put in cattle for herbage—that is to say, 6 cows, 4 oxen, 3 horses or yearlings, or 24 calves, to 10 acres of land, and so in proportion to greater or lesser quantities of land; and no person shall cut or strip their Indian corn stalks after they have gathered their corn, on penalty of forfeiting herbage." These old common fields have long since disappeared, for they are now built over by the city of Salem; but there still survives, at a little distance from the heart of the town, an example of the same sort of land tenure upon quite a large scale. The so-called Great Pastures of Salem, some three hundred acres, are, to this day, owned and managed by a small company of proprietors in common, of whom Dr. Wheatland, of the Essex Institute, has been, for many years, the clerk. He has in his possession the

records of the proprietary, extending back for many generations. These records are full of old time regulations in regard to common fencing, common pasturage, cow commons, sheep commons, and the like. The votes are much the same from year to year. We can hardly expect much variety in the administration of common fields during the short period of New England history since the system endured for so many centuries in Europe without any appreciable modification.*

The life principle enduring in these apparently dead forms of land tenure is the sovereignty of the community over its individual or associate members. Although inheriting definite rights in the common land, shareholders are subject to the will of the majority. Communal sovereignty over lands exists even where individual landed rights appear most absolute. The other day a newspaper scrap was sent me from the South concerning a Mississippi planter who wanted to turn his plantation into a stock farm. His neighbors who were in the habit of planting cotton remonstrated and carried the case into public court, praying for an injunction to prevent the man from sowing grass seed, on the ground that the grass would spread over adjoining plantations and unfit them for raising cotton. The injunction was granted by the court and illustrates how, in a quarter of our country where individualism is supposed to be most rampant, the sovereignty of the community over land is recognized by law, even in the matter of what farmers plant.

Traces of the old system of agrarian community are cropping out in many different States of the American Union, which itself is based, as a permanent and necessary institution, upon the idea of territorial commonwealth, with self-governing States gradually organized out of the Common

* The village community of early Salem is one of the most remarkable cases of historic survival in New England. An attempt to point out ome of the most striking features of that old plantation has been made in a monograph upon "Cape Ann and Salem Plantations," first published by the Essex Institute, and afterwards republished in this University series.

Land of the nation,* as New England Towns were organized out of village folk-land. Wherever in this common Saxon land the student may care to institute researches into the beginnings of civic life, there he will find, if he digs deeply enough, the old Saxon principle of land community uniting men upon a common economic basis and around a common centre. Whether that centre be the Town Commons of the North or the Court Greens of the South, the Common Pastures of Massachusetts or the Common Pastures of South Carolina; the folk-land of a ville, parish, township, state, or nation,—it is after all much the same in principle, for these communal interests are all derived from a common Saxon source. There is much to learn by a study of the local beginnings, agrarian and economic, of these United States. There is surely a common country of historic worth yet to be discovered, for mere surface-mining, here and there, in various quarters, indicates a vast and wide-reaching commonwealth below. It is the commonwealth of law and custom, of race and kinship, historic mines that can never be exhausted, for they extend not only underneath all imaginary sections of our land, but under the dividing sea of Revolutionary History itself, uniting the New World inseparably to the Old.

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* Maryland's influence in founding a National Commonwealth, Fund Publication No. 11, Maryland Historical Society, 1877. By H. B. Adams. In this monograph there is evidence showing not only that the influence of Maryland predominated in securing the great land cessions to the United States, but that the common relation of the English Colonies in America to these western lands, won by the blood and treasure of all, was in itself a most substantial ground for permanent and necessary Union.

This was the first original work done in the historical department of the Johns Hopkins University. It was reviewed at length by Von Holst in the *Historische Zeitschrift*, 1878, Bd. 40, 380-84, and mentioned in *The Nation*, Dec. 12, 1878. It is gratifying to the author to find his results accepted by Mr. John Fiske in his recent article on "The Germs of National Sovereignty in the United States," Atlantic Monthly, Nov. 1886.

CO-OPERATION IN UNIVERSITY WORK.

By The Editor.

[These explanatory remarks were made November 17, 1882, before the Historical and Political Science Association of the Johns Hopkins University for the sake of developing still further, on the part of its members, that co-operative spirit which is the motive power of this University Series.—H. B. A.]

The need of some channel for the systematic publication of Johns Hopkins University Studies in Historical and Political Science, gave rise to the idea of a series of monographs, each complete in itself, but all contributing toward a common end,—the development of American Institutional and American Economic History. The idea of a serial publication of numbered monographs, one paper sustaining another, was already current in Holtzendorff's Deutsche Zeit und Streit-Fragen; in Virchow's and Holtzendorff's Sammlung gemeinverständlicher wissenschaftlicher Vorträge; in Conrad's Sammlung nationalökonomischer und statistischer Abhandlungen des staatswissenschaftlichen Seminars zu Halle; and in Schmoller's Staats- und socialwissenschaftliche Forschungen. But the special impulse to this University Series was the Giessener Studien auf dem Gebiet der Geschichte, instituted in 1881 by Wilhelm Oncken, editor of the Monograph-History of the World, (Allgemeine Geschichte der Welt in Einzeldarstellungen,) a serial work which has been in progress since 1878, through the co-operation of historical specialists, a work which has an earlier parallel in the political field in Bluntschli's Staatswörterbuch (1857), and a later parallel in the economic field in Schoenberg's Handbuch des politischen Oekononomie (1882), both composed by specialists upon the sound economic principles of division of labor and scientific co-operation.

The impulse received, in the first instance, from Germany was strengthened by a knowledge of the efficient workings of the co-operative method of writing municipal and national history in

America, under the direction of Professor Justin Winsor of Harvard University; also by observation of the co-operative method in the conduct of the American Journals of Mathematics, Philology, Chemistry, the Studies from the Biological Laboratory, and the Journal of Physiology, the latter edited by an English scholar with the co-operation of English and American specialists, but published in this country under the auspices of the Johns Hopkins University; still further by acquaintance with the Peabody Fund Publications of the Maryland Historical Society; and by practical suggestions from Mr. Sidney S. Rider, publisher of the Rhode Island Historical Tracts.

The idea of studying American Institutional and American Economic History, upon co-operative principles, beginning with local institutions, and extending ultimately to national institutions, developed gradually from an interest in municipal history, first awakened in the Seminary of Professor Erdmannsdoerffer at the University of Heidelberg, where, in 1875, while reading the *Gesta Friderici Imperatoris*, by Otto of Freising, seminary-discussion turned upon the Communes of Lombardy and the question of the Roman or Germanic origin of city government in mediæval Italy. This awakened interest, quickened by the reading of Carl Hegel, Arnold, Von Maurer, Fustel de Coulanges, was ultimately directed toward England and New England by a suggestion upon the last page of Sir Henry Maine's Village Communities, where, quoting Palfrey's History of New England (ii, 13, 14) and certain remarks in *The Nation* (No. 273)* upon the passage by Professor William F. Allen of the University of Wisconsin, Sir Henry calls attention to the survival of Village Communities in America. This suggestive idea, verified in all essential details with reference to Nantucket, Plymouth Plantations, Cape Ann, Salem and the oldest towns in New England, has been extended gradually to a

* Professor Allen's communication was published in *The Nation*, September 22, 1870, as a "Note" upon Maine's "Ancient Law," before his "Village Communities" appeared (1871). Professor W. F. Allen was the first to verify Sir Henry Maine's agrarian theory in America by independent research in the island of Nantucket, a study published in *The Nation*, January 10, 1878, under the title, "A Survival of Land Community in New England." Cf. *The Nation*, Nov. 10, 1881.

co-operative study of American local institutions in all the older States and throughout the North-west, where, in Wisconsin, Professor Allen, the original pioneer, had joined in the work, supported by his Seminary of advanced students. The idea is represented in the distant University of Nebraska, at Lincoln, by Professor George E. Howard, who, trained at German Universities, is this year teaching "Institutional History" by the comparative method, with Maine, Hearn, Laveleye, Fustel de Coulanges, and Lewis H. Morgan for suggestive guides.

It is interesting to see the knowledge of Aryan institutions thus advancing westward. The science of English Institutional History is represented in the University of California by Albert S. Cook, the newly appointed Professor of English, who, while Associate at the Johns Hopkins University, co-operated most efficiently with the Historical Seminary in teaching its members Anglo-Saxon and in publishing for their use "Extracts from the Anglo-Saxon Laws" (Henry Holt, 1880), illustrating the early "institutions and manners of the English people." This work was the direct outgrowth of Seminary needs, for Stubbs' Select Charters contained but few extracts from Anglo-Saxon Law and these only in the English translation by Thorpe. Mr. Cook's edition was made very serviceable to students by constant reference to Stubbs' Constitutional History and to the Essays in Anglo-Saxon Law by Professor Henry Adams, formerly of Harvard College, and by his pupils, Henry Cabot Lodge, Ernest Young, and J. Laurence Laughlin, who, advancing from German and English ground, were among the first to give a decided impetus to the study of historical jurisprudence in America.

The career of Mr. Cook well illustrates the way in which modern science is conveyed in personal forms from one country or one University-centre to another. Graduating from Rutgers College in 1872, he taught and studied for a few years in this country, and then went to Goettingen, afterward to Leipzig. In 1879 he was called to Baltimore to teach Early English, of which in America and in Germany he had made a specialty. In 1881 he went to England to study with Professor Sweet, then back again to Germany, where, at Jena, in the summer of 1882 he took his Doctor of Philosophy, with a thesis on the Northumbrian Dialect, approved by Professor Sievers. It is probable that his previous

University connections with Baltimore, together with other influences proceeding from English and German experience, had some bearing upon his immediate call to a professorship in the University of California. Thus from the region of Saxe-Weimar, or as Freeman says, "that make-believe Saxony which is really Slavonic," a knowledge of Early English was borne across real Saxon land, across the Ocean, across a Continent, to the most western home of the English people, a home which Charles Kingsley called "a New World beyond a New World." Saxon Studies, like Saxon Conquests, have pushed westward as well as eastward, beyond Old Saxon and Old English frontiers. It is interesting to see scientific *Markgrafen*, like Cook and Sievers, stationed upon the modern borders. "What Saxon is Cook studying at Jena? Why go so far?" writes Freeman. "They talk a fine West-Saxon in Virginia,* with their *ea* and *eo* well turned out, almost as on *Sumorsaetan*, only on *Sumorsaetan* they distinguish

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*Mr. Freeman knows Virginian in only one of its varieties. Tide-water, Piedmont, Valley, Southwest all present marked differences. The "Tuckahoe" is bewrayed by his speech as soon as he crosses the Blue Ridge. The broad *a*, in a host of words, in which it is unknown to the dictionaries, belongs to the older settlements and persists in certain families even after they have been transplanted to the foot of the mountains. The first *a* in Chamberlayne is pronounced in three or four different ways, all Virginian and so all right. The notorious slurring of the medial *r*, common in large belts of English speech, is observable everywhere in Virginia, but much less in some sections than in others, and the volatilization of the final *r* is not so marked in the Piedmont as it is in the Tide-water section, while the Lower Valley has a guttural *r* final, due to German influence. Scotch-Irish has told on the dialect of the Upper Valley and the Southwest. Clipping of final consonants is notoriously Scotch, and easy theorists have exaggerated the African influence. But this is not a subject for any one except a trained and unprejudiced observer. Almost everybody notices differences of pronunciation, but very few can register them with precision and reproduce them with accuracy. It is high time that linguistic students should enter upon this field of research before the outlying districts of the South are brought into the quicker life of the other States. The Southern *shibboleths* will in time be lost, and I have myself heard from Southern lips such pronunciations as "*Noo-Yark*," "*Toosday*," and "*dooty*," which used to wound the Southern ear almost as much as the gasping of the Cockney, which we call "dropping the *h*."—B. L. G.

janua * and *dama* which on *Magdslande* sound alike." But it takes a West-Saxon thus to recognize West-Saxon. Old England explains New England. Schleswig and Switzerland reveal Early England to the English historian. A knowledge of Old World science is absolutely indispensable to scientific discovery in the New World. The local dialects of America can never be studied with an understanding mind until American students study the local dialects of England, as Dr. Cook has studied the Northumbrian dialect. There is, perhaps, a certain historic fitness in the fact that Old English is so well taught in Germany, the oldest of the three homes of the English people; and it is surely very natural that Saxon studies should traverse and re-traverse the old lines of Teutonic migration.

There is nothing in the wandering of peoples or in the history of the *Errantes Scholares* of the Middle Ages which rivals the migration of the modern scholar. In 1875, the year President Gilman came eastward to Baltimore from the University of California, whither he had been called in 1872 from a professorship in Yale College, a student who that year graduated from Berkeley came eastward by the advice of his teachers and wandered, like a veritable *fahrender Schüler*, from one institution to another until he reached the University of Leipzig, upon the historic border between the Teuton and the Slave. At the same time, the newly appointed President of the Johns Hopkins University was wandering over Europe, visiting the chief educational institutions of

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* Readers who happen not to be familiar with the peculiar pronunciation of Piedmont Virginia (*Magdsland*), and who therefore fail to apprehend Mr. Freeman's allusion, may now enjoy what the President of the Delphian Club thought the crowning felicity of human existence—"a joke well explained." In the region referred to, the final *r* is usually silent; and thus *door* (*janua*) and *doe* (*dama*) are pronounced exactly alike. The writer remembers to have met with an indigenous ballad, set to music, and much in favor with the fair sex, in which "store," "sure," and "so" were made to rhyme with each other. It represented the reasonable irritation of a maiden at the timidity of a bashful lover, who could not screw his courage to the proposing-point; and in one stanza she complains:

"I know his love is constant,
Affectionate and pure: [pyô]
What ails the bashful fellow
That he cannot tell me so?" —W. H. B.

Germany, France, and England, with a view to the transmission of ideas from the Old World to the New. In 1876 the American student, quickened by European travel and experience, returned to his native land to enter upon a philosophical Fellowship at the new University, the President of which had been inaugurated in the Monumental City on the 22nd of February of that year. The University, like the ideas of its President and like the culture of the returning student, was neither German nor French nor English, but American and cosmopolitan. This country and all its institutions, though they adopt the best which the Old World can teach, will still constitute a New World by natural selection, and by independent organization in harmony with a new environment. The California student, who had been schooled in German Universities for one year, studied for two more years at the Johns Hopkins University and then took his degree of Doctor of Philosophy, with this significant thesis, "The Interdependence of the Principles of Human Knowledge." He was then called across the Continent, to his Alma Mater, to become an Assistant Professor in literature and philosophy. From that frontier-post, his contributions to the *Californian*, the *Berkeley Quarterly*, and the *Journal of Speculative Philosophy* came migrating eastward. "Mind-stuff" and other "Realities" pushed across the sea, marched into England from the West, and effected a certain intellectual conquest in self-restricted Saxon ways by publication in a very special philosophical journal known as "*The Mind*," (July, 1881; Jan., 1882). In 1882 Dr. Royce himself again migrated eastward, having been invited to a position as lecturer upon Philosophy in Harvard College, as substitute for Professor James, who was wandering in Europe.

At the same time Dr. Royce was returning eastward, Dr. Stringham, a graduate of Harvard College and afterward a Fellow of the Johns Hopkins University, then travelling Fellow of Harvard, was returning westward from the University of Leipzig to his old home in Kansas, to push on thence to his new western home in the University of California, where he has accepted a professorship in Mathematics. And now a student from California, bearing letters from the faculty of the institution at Berkeley, has come eastward to Baltimore, leaving an associate editorship of the San Francisco Bulletin, for the sake of discover-

ing, for himself, an old world of science. And already in the light of Institutional studies he is investigating the municipal history of St. Louis, and is preparing to develop a veritable mine in the study of frontier law and of the wonderful evolution of self-government in California mining-camps,* where old Saxon forms of associated families of *men* sprang full armed into life and law. Four students from Professor Howard's Seminary in Nebraska have come eastward to continue historical studies. They represent, moreover, a comity of scientific associations first established at German Universities between their American instructors.

Such facts illustrate not only the remarkable migrations of the modern scholar, but that curious system of intercollegiate exchange which has developed so rapidly of late in America. Within the short space of six years, a graduate of Harvard College has held in Baltimore a Johns Hopkins University Fellowship, one of the Harvard "travelling" Fellowships at Leipzig and Bonn, a tutorship at Harvard, a professorship at Bowdoin College, and a professorship in the University of Virginia, where he, a New England man, succeeded a Virginian who had been called north to Columbia College. There are signs of a new era in the educational history of this country. A graduate student from South Carolina comes to Baltimore and, through association with a graduate of Brown University, obtains the Principalship of a High School in a Connecticut Town. Dr. Ely, an A. B. of Columbia College, lectured in Baltimore and Ithaca. A graduate of Iowa College in 1874, afterward a student at Andover Theological Seminary, held a Fellowship in Political Science for two years in Baltimore, took his degree of Ph. D.,† studied one year at Heidel-

* Charles Howard Shinn, author of various chapters in Scharf's History of St. Louis and of "Mining Camps," pp. 316, New York, Charles Scribner's Sons, 1885, is now, 1886-7, editor of *The Overland Monthly*, San Francisco, Cal.

† Dr. Henry C. Adams' graduating thesis for the Doctor's degree at the Johns Hopkins University, taken in 1878 after special examination in History by Mr. George Bancroft and in Political Economy by Professor Francis A. Walker, was published in the Tübinger Zeitschrift für die gesammte Staatswissenschaft, 1879, under the title Zur Geschichte der Besteuerung in den Vereinigten Staaten von Amerika in der Periode von 1789–1816. The paper has been republished in the University Studies, Vol. II, V–VI, and the subject has been continued in America.

berg under Knies and Bluntschli and at Berlin under Wagner and Engel, then, after his return to America, lectured in quick succession at three different institutions, at Michigan, Cornell, and Johns Hopkins Universities. C. R. Lanman, a Doctor of Philosophy from Yale College, who afterward studied two years in Germany, advanced in four years from a Fellowship and an Associateship in the Johns Hopkins to a professorship in Harvard College. He was succeeded by a former pupil in Baltimore, who, born in Austria, migrated to America, entered the University of Chicago, graduated in 1877 at Furman College, South Carolina, from the instruction of Professor Toy, studied under Professor Whitney in New Haven one year, took his Ph. D. in Baltimore in one year more, and then studied a year longer in Germany before returning to the Johns Hopkins. A Harvard Lecturer and a Michigan Professor used to spend half their time in Baltimore. College training and professorial experience are no longer local and provincial. Stronger currents of influence are already arising: collegiate reciprocity, the exchange of thought, methods, and men; university education in the Old World and in the New; special qualifications for special work; character born of good training at home, and developed by school, college, university, and the world,—these are ideas which must prevail.

Among the most encouraging signs of the times are the cordial relations subsisting between the higher institutions of learning, and especially in that growing brotherhood of scholars which is to be found in every real University centre. At the Johns Hopkins during the year 1881–2 there met, upon the common ground of science, representative graduates from fifty-two different Colleges and Universities, students from twenty-one different States of the American Union, and from various foreign countries. If to this record should be added a full account of the various College and University connections that, at one time or another, have been enjoyed by the ninety-four Fellows, by the eighty-six different Instructors, Lecturers, Associates, and Professors who have been connected with the Johns Hopkins, it would certainly appear that the leading institutions of Europe and America had met in Baltimore by representation. The College and University system of the world would appear in a microcosm. Without special knowledge of or inquiry into the subject, one might enumerate the following Euro-

pean centres of learning which have afforded instruction and scientific training to members of the Johns Hopkins University staff: Oxford, Cambridge, London, Paris, Berlin, Vienna, Leipzig, Munich, Goettingen, Tübingen, Heidelberg, Strassburg, and other German Universities, the round of two or three of which is always made by American as well as by German students. Lecturers from Oxford, Cambridge, the University of London, Freiburg im Breisgau, Harvard, Yale, Brown, Cornell, Michigan, Wisconsin, Virginia, and Tennessee have appeared in Baltimore. More than one hundred students and instructors have gone forth from the Johns Hopkins University to lecture or teach elsewhere. Fifty different institutions of collegiate or university grade have had instructors from Baltimore.

It is interesting to view geographically the migration of influence from this University centre into the South, the South-West, the West, across the Continent, and around the world. The Johns Hopkins has sent professors or teachers to the Universities of Virginia and of North Carolina, two Colleges and a Theological Seminary in South Carolina, University of Louisiana, Universities in Tennessee and Kentucky, three Colleges and a University in Pennsylvania, two Colleges and a University in Ohio, University of Michigan, University of Wisconsin, University of California, University of Tokio, and University of Bonn. Baltimore specialists have continued work at the Universities of Vienna, Berlin, Leipzig, Jena, Munich, Heidelberg, Strassburg, Bonn, Goettingen, Paris, London, Oxford, Cambridge, and Edinburgh. Harvard and eight of the higher institutions of learning in New England, (including those at Amherst, Northampton, and Williamstown), Cornell, Princeton, Western Maryland College, and various institutions in the City of Baltimore, have seen fit to employ the services of Johns Hopkins men as lecturers or instructors.

It is, to some extent, upon the historic basis of such connections as these that the Johns Hopkins University is gradually widening its lines of practical influence and efficient co-operation. Such connections afford a vantage-ground for the up-building of Science, for the extension of new methods in America, for the local establishment of new ideas. The present plan for the co-operative study of Historical and Political Science is for advanced students, whether teachers or pupils, here or elsewhere, to investigate in a

systematic way the Institutional or Economic History of their own section or locality. Young men, with slight experience in scientific research, will see an obvious advantage in beginning work upon familiar ground and upon limited areas. It is not necessary to re-write the History of the "Constitution" or to grapple with the giant of American Finance in order to learn how to deal with historic and economic questions. History and Economy begin at home. The family, the hamlet, or neighborhood, the school or parish, the village, town, city, county, and state are historically the ways by which men have approached national and international life. It was a preliminary study of the geography of Frankfort on the Main that led Carl Ritter to study the physical structure of Europe and Asia, and thus to establish the new science of Comparative Geography. He says, "Whoever has wandered through the valleys and woods, and over the hills and mountains of his own State, will be the one capable of following a Herodotus in his wanderings over the globe." And we may say as Ritter said of the science of geography, the first step in History is to know thoroughly the district where we live. In America, Guyot has represented for many years this method of teaching geography. Huxley in his Physiography has introduced pupils to a study of Nature in its entirety by calling attention to the physical features of the Thames valley and the wide range of natural phenomena that may be observed in any English Parish. Humboldt long ago said in his Cosmos, "Every little nook and shaded corner is but a reflection of the whole of Nature." There is something very suggestive and very quickening in such a philosophy of Nature and History as regards every spot of the earth's surface, every pebble, every form of organic life, from the lowest mollusk to the highest phase of human society, as a perfect microcosm, perhaps an undiscovered world of suggestive truth. But it is important to remember that all these things should be studied in their widest relations. Natural history is of no significance if viewed apart from Man. Human history is without foundation if separated from Nature. The deeds of men, the genealogy of families, the annals of quiet neighborhoods, the records of towns, states and nations are *per se* of little consequence to history unless, in some way, these isolated things are brought into vital connection with the progress and science of the world. To establish

such connections is sometimes like the discovery of unknown lands, the exploration of new countries, and the widening of the world's horizon.

American local history should first be studied as a contribution to national history. This country will yet be viewed and reviewed as an organism of historic growth, developing from minute germs, from the very protoplasm of state-life. And some day this country will be studied in its international relations, as an organic part of a larger organism now vaguely called the World State, but as surely developing through the operation of economic, legal, social, and scientific forces as the American Union, the German and British Empires are evolving into higher forms. But American History in its widest relations is not to be written by any one man or by any one generation of men. Our History will grow with the Nation and with its developing consciousness of internationality. The present possibilities for the real progress of historic and economic science lie, first and foremost, in the development of a generation of economists and practical historians, who realize that History is past Politics and Politics present History; secondly, in the expansion of the local consciousness into a fuller sense of its historic worth and dignity, of the cosmopolitan relations of modern local life, and of its own wholesome conservative power in these days of growing centralization. National and international life can best develop upon the constitutional basis of Local Self-Government in Church and State.

The work of developing a generation of specialists has already begun in the College and the University. The evolution of local consciousness can perhaps be best effected through the Common School. It is a suggestive local fact that the School Committee of Great Barrington, Massachusetts, lately voted (*Berkshire Courier*, September 6, 1882) to introduce into their village High School,* in the hands of an Amherst graduate, in connection with Nordhoff's "Politics for Young Americans" and Jevons' "Primer of Political Economy," the article upon "The Germanic Origin of New England Towns," which was once read in part before

* The catalogue of the Great Barrington High School (1882) shows that the study of History and Politics is there founded, as it should be, upon a geographical basis.

the Village Improvement Society of Stockbridge, Massachusetts, August 24, 1881, and published in the Pittsfield Evening Journal of that day. Local demand really occasioned a University supply of the article in question. The possible connection between the College and the Common School is still better illustrated by the case of Professor Macy, of Iowa College, Grinnell, who is one of the most active pioneers in teaching "the real, homely facts of government," and who in 1881 published a little tract on Civil Government in Iowa, which is now used by teachers throughout that entire State in preparing their oral instructions for young pupils, beginning with the township and the county, the institutions that are "nearest and most easily learned." There should be such a manual for every State in the Union. Professor Macy has more recently, 1886, published an instructive text-book on "Our Government" in general, treating the subject historically and practically (Boston, Ginn and Company, 1886).

It is curious to see how influences act and interact. In 1881, Mr. Shaw came to the Johns Hopkins University, leaving the conduct of a Grinnell newspaper in the hands of an associate editor. Here in Baltimore, the young man from Iowa joined the Historical Seminary and wrote a paper upon "Local Government in Illinois," which won high praise from James Bryce, M. P., and was, at the latter's request, published in the Fortnightly Review, October, 1882, and will soon be republished in this University Series. From such influences and such connections, local and metropolitan, Mr. Shaw has advanced to a study of "Icaria" and of American Co-operation, in connection with other workers in this field. Since 1884, he has been editor of the *Minneapolis Tribune.*

Studies in Historical and Political Science in connection with the Johns Hopkins University will proceed upon municipal lines towards the scientific investigation of State and National Institutions, political, economic, and educational. By combination of strength and by continual reinforcement, American History and American Economics may finally advance in lines both long and firm, as seen, for example, in Mr. Winsor's "Narrative and Critical History of America," which is the joint work of specialists in various parts of the country. Extensive tracts of historic and economic ground have been already pre-empted, but enough

remains for student-immigration throughout the coming generation. The beauty of Science is that there are always New Worlds to discover. And at the present moment, there await the student pioneer vast tracts of American Institutional and Economic History almost as unbroken as were once the forests of America, her coal measures and prairies, her mines of iron, silver and gold. Individual and local effort will almost everywhere meet with quick recognition and grateful returns. But scientific and cosmopolitan relations with College and University centres, together with the generous co-operation of all explorers in the same field, will certainly yield the most satisfactory results both to the individual and to the community which he represents.

It is highly important that isolated students should avail themselves of the existing machinery of local libraries, the local press, local societies, and local clubs. If such things do not exist, the most needful should be created. No community is too small for a Book Club and for an Association of some sort. Local studies should always be connected in some way with the life of the community and should always be used to quicken that life to higher consciousness. A student, a teacher, who prepares a paper on local history or some social question, should read it before the Village Lyceum or some literary club or an association of teachers. If encouraged to believe his work of any general interest or permanent value, he should print it in the local paper or in a local magazine, perhaps an educational journal, without aspiring to the highest popular monthlies, which will certainly reject all purely local contributions by unknown contributors. It is far more practicable to publish by local aid in pamphlet form or in the proceedings of Associations and learned Societies, before which such papers may sometimes be read.

It is highly desirable that every paper which appears in connection with the Johns Hopkins University Studies should bear the stamp of corporate recognition by some worthy local organization. Such approval and especially such preliminary publication, will introduce an unknown student to science with credentials from a local constituency. Every paper which is printed in this first University Series has some such endorsement. In cases where it is impracticable to secure preliminary publication or local recognition, papers may be submitted to the Editor of this Series for

reference to a special committee and for ultimate report to the Johns Hopkins Historical and Political Science Association, which, with its tributary Seminary of American Institutional and Economic History is at present the main and not inadequate supply for this University publication.

This experiment of a University Series in the field of Historical and Political Science, like many other experiments in connection with the educational policy of the Johns Hopkins, is "tentative." It is primarily an attempt to meet a real want on the part of graduate students of History and Politics at this institution. It is secondarily a means of efficient co-operation between graduates here and friends of Historical and Political Science elsewhere, along lines of inquiry that have been already opened in American Institutional and Economic History. The plan is upon a very safe footing and will not outrun the range of actual experience. Every step thus far has been experimental. Every paper upon the published list has relations established with some local clientage, some learned society, magazine, or journal, or else with the Johns Hopkins University. The foundations of the enterprise are thus historical and economic.

Encouragement has been given to the undertaking by the President and Trustees of the Johns Hopkins University, by the Historical Societies of Maryland, Pennsylvania, South Carolina; by the New England Historical and Genealogical Society, by the Essex Institute, the Magazine of American History, by the Pennsylvania Magazine of History and Biography, by the American Antiquarian Society, the American Social Science Association, and by the Fortnightly Review. Aside from such corporate recognition, three eminent specialists in the field of History and Politics have expressed their hearty approval of this project: Mr. Edward A. Freeman, who stands as godfather to the series by a contribution to its first number; James Bryce, M. P., who requested one of the Studies for publication in an English Review; Maxime Kovalevsky, Professor of History and Politics in the University of Moscow, who last summer came to this country to investigate our agrarian history and the germ-life of American Institutions, which subjects he found already in process of investigation at the Johns Hopkins University.

The international comity of Science is well illustrated in the visit of this Russian Professor, the friend of Turgénieff, who intro-

duced him to this country through Henry Holt, of New York. After visiting Harvard University, Professor Kovalevsky came to Baltimore with letters of introduction to members of the Johns Hopkins, with some of whom he had already indirect acquaintance through the cosmopolitan associations of German Universities. On his way to Baltimore he visited the library of the Pennsylvania Historical Society in Philadelphia and asked Mr. Stone, the librarian and editor of the Pennsylvania Magazine of History and Biography, if he had any materials upon the subject of Local Self-Government in that State. "Nothing except proof-sheets," was the response, and Mr. Stone handed Professor Kovalevsky an article which Mr. E. R. L. Gould had lately read before the Pennsylvania Historical Society and which was about to be printed in the Magazine. The professor continued his journey to Baltimore and sought out Mr. Gould, as well as the scientific resources of the Seminary, which, together with those of the Maryland Historical Society, were placed entirely at his command. He gathered much in a few days, chiefly documents, touching the history of our Public Lands and the mode of settling and organizing the Great West. He requested the co-operation of the Seminary in making known to Russia the Institutional and Economic History of the United States. He made arrangements for the sending to Moscow of all monographs in this Series as soon as published, and even secured proof-sheets of Mr. Gould's article and other University papers in their first form of publication. But he gave the Seminary far more than he received. He held long conferences with individual members; he put them upon the track of old-world monographs that had escaped American notice; he put individuals in communication with European scholars; he gave many useful suggestions as to the best methods of exploiting Old English Institutional and Economic History, upon which subjects he himself has worked for many years.

Professor Kovalevsky is the leading Russian authority in the field of economic and institutional history, wherein there have been and are so many co-workers in various countries, among whom are George and Konrad Von Maurer, Hanssen, Meitzen, Thun, Nasse, Knies, Roscher, Bücher, Held, Inama-Sternegg, Brentano, Cohn, Ochenkowski, Miaskowsky, Laveleye, Fustel de Coulanges, Rogers, Sir Henry Maine, Mr. Seebohm, Henry Adams,

H. C. Lodge, Ernest Young, J. Laurence Laughlin, W. F. Allen, and D. W. Ross. In the *Revue Historique*, the French rival of the *Historische Zeitschrift*, is an appreciative Review, May and June, 1882, of Kovalevsky's labors in the history of communal institutions. In speaking of his two most recent works, written in Russian, one on Communal Property (I. Moscow, 1879) and the other on the Social Organization of England at the close of the Middle Ages (Moscow, 1880), it is said, "Ce sont les ouvrages les plus importants et les plus solides qui aient vu le jour en Russie dans ces deux dernières années." The first work, not yet completed, concerns communal property among the native races of America, the agrarian policy of Spain in the East Indies, communal property in India, modifications of the land tenure in India by Mohammedan and English dominion, land tenure in Algiers and the agrarian policy of France. Kovalevsky has also written an Umriss einer Geschichte der Zerstückelung der Feldgemeinschaft im Kanton Waadt (Zürich, 1877), and various other works, in French and Russian.

The advice and encouragement of such a cosmopolite in Science, who is equally at home in Paris, London, Berlin, and Moscow, who has investigated the social and economic history of countries as wide apart as India and America, who studies the *Landesgemeinde* of Switzerland, the Town Meeting of New England, and the Russian *Mir* as kindred institutions, who views the American Prairies of the Great West and the Russian Steppes of the Great East in the same economic light, who represents in his political philosophy the wide horizon of internationality as well as nation, state, and narrow commune,—the advice and encouragement of such a man cannot but quicken American youth who are beginners in Science. There is no danger of their studies being lost or absorbed in such a master mind. On the contrary, through such influences, through such connections with European scholars and European journals, good local work in America will pass into higher international forms and yet remain distinctively American.

European scholars are only too glad to accept and recognize as authoritative the special work of American students investigating upon their own ground, with all the advantages of local acquaintance, local observation, local libraries, (private and public,) local

societies, local sympathy, and local co-operation. Foreign scholars, who travel through this country in a hurried way, know well that their knowledge of the land is superficial and their experience necessarily limited. Observers of American Democracy like Tocqueville, Kovalevsky, Freeman, Bryce, and Herbert Spencer may ascend the very citadel of scientific privilege; they may view the country with their own eyes, through newspapers, or through books, but they can never command the American situation. Nor is this their ambition. Their primary object is to sketch America for the benefit of their own countrymen; and they are always glad to carry home suggestive ideas for the completion of their sketches. Professor Kovalevsky would have been delighted to find in Baltimore articles on the Local Self-Government of every State in the Union. Mr. Bryce would have been pleased to find some scientific account of the origin and course of that municipal revolution in Philadelphia, where, in classic speech, Mr. Freeman described the overthrow of one-man power as *procumbit humi bos!* (For such an account, see Extra Volume II. 1887.)

American students are beginning to find out the scientific significance of contemporary Municipal and National Politics in America. They are beginning to see what wide-reaching economic, institutional, administrative, educational, political, and international problems may be investigated at home without going abroad for original material. Old-world science and old-world methods have been introduced into this country in a liberal way during the past few decades, and from this scientific vantage-ground it would seem to be most advisable for American students of History and Politics to enter fields for which there are in this country very superior advantages. While recognizing the unity of all Science, we must nevertheless admit that there are limitations and varying conditions for the successful prosecution of certain branches. It would obviously be very poor economy for an American, living in this country, to attempt to write the municipal or economic history of any English Town, German Free City, or French Commune, for which work the best, if not the only, materials are upon the other side of the Ocean. On the other hand, not even *Deutscher Fleiss*, or a German University, or the British Museum, can amass and control the materials, manuscript and printed, relating to a single American city or one

of the older New England Towns. And yet such resources can easily be commanded by Americans at home, through the mediation of State Historical Societies, or through connection with American antiquarians and local historians. Why should Americans attempt to write the history of foreign governments, foreign institutions, old world economies, when there is so much to do upon home-ground? The results of European investigations lie before our very doors, and can be employed in a thousand legitimate ways for the upbuilding of American Institutional and American Economic History. Pioneer work and fresh discoveries are everywhere possible in this country; but this cannot be said so emphatically of the Old World. All the benefit of scientific method and scholarly training that could be derived from traversing and re-traversing the archæological fields of Europe, may be enjoyed in America, with the additional advantage of finding new truth in independent ways.

No country has such scientific possibilities as America, where in a College Town of 12,000 inhabitants, like Northampton, Massachusetts, one individual, Judge Forbes, leaves a bequest of over two hundred thousand dollars for a free public library "of science and the arts in their broadest acceptation, of ancient and modern history, and of the literature of our own and other nations;" or where, as in the city of Baltimore, another individual, George Peabody, endows with $1,250,000 an institute, comprising, (in addition to lecture courses, a conservatory of music, and an art gallery), "an extensive library, to be well furnished in every department, to satisfy the researches of students who may be engaged in the pursuit of knowledge not ordinarily attainable in the private libraries of the country;" and where another individual, Enoch Pratt, endows another public library with over a million dollars;* and where still another philanthropist endows a University and a Hospital upon a scientific basis with a total fund of $7,000,000. And if such generous foundations are not enough to gratify the growing wants of young Americans, there is the expanding Library of Congress, the Library of the State Department, with its manuscript treasures, the Smithsonian Institute,

*On "Libraries in Baltimore," see article by H. B. Adams in *The Nation*, February 9, 1882. Reprinted in the *University Circulars*, March, 1882.

and the scientific resources of the National Government, which, through proper channels, may be commanded by the poorest student.

And yet even these prospects, my hearers, are not the widest which are opening to view. Through University co-operation in Baltimore, the individual scholar may now command the latest results of scientific inquiry, even before it takes permanent form in printed volumes and in the great libraries of Town, City, and Nation. Through our University Journals, the teacher of science, and the special student, even though removed from scientific centres, may learn of the progress of his department in this country and in Europe. Through a system of scientific exchanges, now developing in Baltimore, the Proceedings of learned societies, the most recent discoveries in foreign laboratories of science are quickly made known to American students. Through a New Book Department, the freshest monographs and the newest books, French, German, and English, are brought to student-notice immediately upon publication, so that Americans in Baltimore are more sure of seeing these things than is possible in the smaller German University towns, where such library organization is unknown.

By organized, co-operative effort, American students can establish organic relations with European Universities, Old World Societies, foreign magazines of a special character, scientific appliances for publication, both in this country and in Europe,—in fact with the whole complex of Modern Science, into which no individual student can possibly find his way without scientific associations. Fellowship in Science will always afford the individual greater strength than he can acquire alone. A connection with learned societies, special libraries, special journals, is highly advantageous. Co-operation in University work and the organization of scientific results are very important for American students, who wish to advance the cause of special education in this country, and thereby the cause of American Science.

III

Local Government in Illinois

AND

Local Government in Pennsylvania

"It is not creditable to us as an educated people that while our students are well acquainted with the state machinery of Athens and Rome, they should be ignorant of the corresponding institutions of our own forefathers: institutions that possess a living interest for every nation that realises its identity, and have exercised on the well-being of the civilised world an influence not inferior certainly to that of the Classical nations."—*Stubbs, Select Charters.*

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE
HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

III

LOCAL GOVERNMENT IN ILLINOIS

BY ALBERT SHAW, A. B.

Reprinted from the Fortnightly Review

AND

LOCAL GOVERNMENT IN PENNSYLVANIA

BY E. R. L. GOULD, A. B.

Read before the Pennsylvania Historical Society, May 1, 1882

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BALTIMORE

LOCAL GOVERNMENT IN ILLINOIS.

It is difficult to approach the study of the political systems to-day in operation in the new Western States without a feeling that they are wholly artificial and superimposed inventions rather than growths. Such preconceptions must in good measure yield before a study of the simple facts. Artificial and mathematical as is that checker-board system of local geography which a township map of Illinois depicts, it nevertheless furnishes metes and bounds for local governments which are neither novel nor experimental, but are transplanted scions from older growths of Anglo-Saxon communal life, which have already taken firm root in prairie soil and have easily adapted themselves to the modifying influences of the new environment. It must be remembered that the prairie farmer is descended from people who for centuries have had the habit of attending to their own local affairs; and that with all his fondness for paper constitutions and minute written laws, he is but re-enacting, under modified forms, the social arrangements under which the Anglo-Saxon usually insists upon living, wherever you transplant him. The safeguards and maxims of the common law are as truly the heritage of the young Anglo-Saxon in the Mississippi Valley as of his cousin on the Severn or the Thames.

The precise forms under which the people of Illinois are to-day governing themselves have been largely shaped by certain facts in the history of the State, and will be best understood in the light of a preliminary historical sketch.

Migration from the Atlantic States to the interior and Western States has always followed the parallels of latitude.

Illinois is a remarkable illustration of this tendency. A glance at the map will show that the State's greatest length (nearly four hundred miles) is from north to south; and that the parallels which mark its northern and southern limits include the sea-board States from New Hampshire to North Carolina. Naturally, then, Southern Illinois derived its population from Virginia and other Southern States, while Northern Illinois was chiefly settled from Massachusetts and other New England States. The inquiry into the habits and opinions of government which these people brought with them to their new homes must carry us a step further back.

M. de Tocqueville, who made his survey of American institutions at a time when the migratory tide was setting strongly toward Illinois, and when her institutions were in a formative stage, says that "two branches may be distinguished in the Anglo-American family, which have grown up without entirely commingling—the one in the north, the other in the south." New England had been colonized by men who were, in the language of the same writer, "neither lords nor common people, neither rich nor poor." A people so similar in education, so agreed in religious beliefs, and so equal in property and in social rank, formed the best material for a pure democracy that the world had ever seen. Gradually they covered New England with a congeries of small self-governing agricultural communities, each with a strongly individual character, and bearing some striking resemblances to the ancient Teutonic "mark." Qualifications for the exercise of political privileges were not onerous, and the whole body of qualified citizens were accustomed to assemble in "town meetings," where they elected officers, discussed neighborhood interests, made laws, and voted taxes. Even when, after the separation from England, the State governments had become firmly established, the towns were still permitted to make and administer most of those laws which were of immediate concern to them. The legislature of the State was composed of representatives from the towns, and made laws which affected the towns only in matters of common interest. Such State laws, furthermore, were executed

by the town officers within their respective jurisdictions. The New England county was an aggregation of towns to constitute a judicial district, wherein might be maintained a judiciary establishment midway between the justices' courts of the towns and the superior court of the State. The county had no very distinct political character. As a whole, the New England system was one highly localized both in administration and in authority.

In Virginia the structure of society was radically different. Opposed to the small freeholds of New England, we find from the beginning a tendency to mass the land in large estates. The institution of slavery, which always dishonors and degrades free labor, forbade the growth of a strong middle class. The wealthy planter had no interest in common with his tenants and servants. The communal life of village or neighborhood could not develop under such an industrial system. The planter was a sort of feudal lord on his own domain, and local self-rule by majorities found no place. We find territorial divisions, but chiefly for convenience in limiting the jurisdiction of courts, collecting State taxes, and holding State elections. The State Government was the centre both of authority and administration. The Governor appointed all justices of the peace throughout the State. The justices residing in any county constituted a county court, which, in addition to judicial functions, was intrusted with the management of all the county business. This court co-operated with the Governor in appointing sheriff and coroner. It appointed constables and road commissioners, levied taxes, and when the State had made some provision for schools, the county court appointed the board of school commissioners. A landed aristocracy thus became the State's fiscal agents, the local magistrates, and the sole managers of county affairs. The subdivisions of the county for elections, schools, and care of paupers, were mere partitions of territory, without political significance.

These two diverse systems of New England and Virginia were destined to meet and to strive for supremacy in Illinois.

Though Illinois forms a part of the vast territory claimed

by the British Crown in virtue of Cabot's voyage of 1498, and was, in part, included in the original Virginia grant, it nevertheless was in possession of the French until finally ceded to England at the close of the "French and Indian War," in 1763. French peasants to the number of three thousand had formed village settlements in the southern part of the State, on the Illinois and Mississippi Rivers. For fifteen years they maintained a military government, with headquarters at the French village of Kaskaskia. In 1778, during the Revolutionary War, the State of Virginia sent out a little force of men, who made their way through the wilderness, took Kaskaskia, and readily persuaded all the French villagers to swear allegiance to Virginia. That enterprising commonwealth proceeded to organize Illinois as a Virginia county, including under that name the entire country north of the Ohio and east of the Mississippi. Although before a decade had elapsed Virginia and the other individual States had ceded their western territories to the United States, Illinois had already received some impress of Virginian forms of government.

Under the famous "Ordinance of 1787," Congress established a provisional government for the country north of the Ohio, which now took the name of the "Northwestern Territory." This charter did not provide for municipal corporations. It allowed the people a representative assembly, and exacted a very low property qualification from electors. While the Legislature was permitted to make all needful laws, the Governor, himself appointed by Congress, was authorized by the ordinance to appoint all minor officers throughout the territory. This, manifestly, was after the Virginia pattern, and was, in fact, the work of no less a Virginian statesman than Mr. Jefferson. But, while the ordinance made no provision for the immediate exercise of local self-government, it did establish principles which formed a basis for the healthy municipal life of a later period. It ordained free trade in land, and the law of partible inheritance by which all the children of an intestate were equal heirs. Add to these two the provision forever excluding slavery,

and a landed aristocracy becomes impossible—a citizenship of small freeholders is infallibly guaranteed. Among other rights forever confirmed to the people by this enlightened Charter of 1787, we find freedom of opinion and worship, trial by jury, the benefit of the writ of *habeas corpus*, the judicial methods of the common law, and proportionate representation.

One by one Ohio, Michigan, and Indiana were carved from the Northwestern Territory, till, in 1809, Illinois was erected into a territorial government under its present name. In 1818 it was allowed to form a State constitution, and passed from its political wardship to the status of a self-controlling commonwealth. Meantime, immigration had been almost exclusively directed to the southern part of the State. The early French settlements, and Virginia's temporary connection with them, seem to have been the determining influences in producing a fact which is the key to much of the legislative history of the State, viz., that the southern half of the State was settled earliest, and that these pioneers were from Virginia, Kentucky, and the Carolinas. It was they who formed the Constitution of 1818, and the instrument bears witness to the origin of its authors. It is true that these sturdy frontier-men were not from aristocratic ranks of Southern society. They may be said to represent that revival of democracy and of the old Anglo-Saxon spirit which the second war with England awakened in the lower classes of the South; and their exodus to the free soil of the wilderness may be characterized as a protest against the semi-feudalism that was crushing them in Virginia. Nevertheless, they were Southern men, accustomed to Southern forms of government, and intensely prejudiced against anything that savored of New England.

At the time of its admission to the Union, Illinois was divided into fifteen large counties. The Constitution of 1818, and laws made pursuant to it, placed the entire business management of each county in the hands of a court of three County Commissioners. We have here a reproduction of the Virginia Court, with two important differences, however:

First, these Commissioners were elected by the people of the county; and, second, by a process of differentiation, this Illinois Court had no judicial functions, the county judiciary being made a distinct tribunal. The people also chose in every county a sheriff, coroner, clerk, treasurer, surveyor, and recorder. The Commissioners appointed election judges, road supervisors, and overseers of the poor, dividing the county into districts for these purposes. Every election precinct was entitled to two justices of the peace, who were appointed by the Governor of the State. After 1826, however, the people of each precinct were allowed to elect their justices. The Commissioners had a narrow range of discretionary power, but there was no power given to communities to control local affairs, or to enact by-laws in promotion of neighborhood interests.

But even at this time there had been planted in Illinois, and throughout the whole West, a germ capable, under right conditions, of developing a highly organized township system. In dividing and designating the public domain, the Congress of the United States had early adopted the system of survey into bodies six miles square, and had given these divisions the New-England name of *townships*. For purposes of record and sale, each township was divided into thirty-six sections a mile square, and these were further subdivided. Every man held his land by a deed which reminded him that his freehold was part of a *township*, and there is much even in a name. But further than this, the United States had given to the people of every township a mile of land, the proceeds of which should be a permanent township school-fund. To give effect to this liberal provision, the State enacted a law making the township a body corporate and politic for school purposes, and authorizing the inhabitants to elect school officers and maintain free schools. Here, then, was a rudiment of local government. As New-England township life grew up around the church, so western localism finds its nucleus in the school system. What more natural than that the county election district should soon be made to coincide with the school township, with a school-house for the voting-

place? or, that justices of the peace, constables, road supervisors, and overseers of the poor, should have their jurisdictions determined by those same township lines?

The admission of Missouri to the Union as a slave State, under the "Compromise Bill" of 1820, seems to have turned the tide of southern migration toward that quarter; while from that time the free State of Illinois began to receive constant and strong accessions from New England and New York. The northern counties particularly were filled with swarms from the eastern hive. There resulted a sectional bitterness and strife in legislative councils, northern ideas gradually becoming dominant. The struggle culminated in the convention which met in 1847 to revise the constitution, and in good measure ceased with the adoption of the revised instrument the following year. This constitution met the question of local government with a compromise. It provided that the Legislature should enact a general law for the political organization of townships, under which any county might act whenever a majority of its voters should so determine. Under the Act accordingly passed by the General Assembly, all the northern counties proceeded promptly to adopt township organization, while the southern counties retained their old county system described above. This was one of those happy, but unusual, compromises whereby both parties gain their principle. It was rendered possible by the distinctly sectional line of demarcation which separated the two elements of population. In Ohio and Indiana the same diverse elements of population had been more thoroughly commingled; and their "compromise system" was the outcome of mutual concession—a hybrid affair, in which township organization was very limited and imperfect.

The form of township government adopted by the Illinois Legislature was a modification of the New England system, changes being made to meet western conditions. It may be regarded as the model system of the Union. One by one the southern counties of the State have become converted to it, until at the present time only about one-fifth of the one hundred and two counties in Illinois cling to the old county

system. Without comment on the minute changes made in the course of thirty years' legislation, we may pass to a view of the local institutions as they are now in operation.

When the people of a county have voted to adopt the township system, the commissioners proceed to divide the county into towns, making them conform with the congressional or school townships, except in special cases. Every town is invested with corporate capacity to be a party in legal suits, to own and control property, and to make contracts. The annual town-meeting of the whole voting population, held on the first Tuesday in April for the election of town officers and the transaction of miscellaneous business, is the central fact in the town government. The following is a summary of what the people may do in town-meeting: They may make any orders concerning the acquisition, use, or sale of town property; direct officers in the exercise of their duties; vote taxes for roads and bridges, and for other lawful purposes; vote to institute or defend suits at law; legislate on the subject of noxious weeds, and offer rewards to encourage the extermination of noxious plants and vermin; regulate the running at large of cattle and other animals; establish pounds, and provide for the impounding and sale of stray and trespassing animals; provide public wells and watering-places; enact by-laws and rules to carry their powers into effect; impose fines and penalties, and apply such fines in any manner conducive to the interests of the town.

The town officers are a supervisor, who is *ex-officio* overseer of the poor, a clerk, an assessor, and a collector, all of whom are chosen annually; three commissioners of highways elected for three years, one retiring every year; and two justices of the peace and two constables, who hold office for four years.

On the morning appointed for the town-meeting, the voters assemble, and proceed to choose a moderator, who presides for the day. Balloting for town officers at once begins, the supervisor, collector, and assessor acting as election judges. Every male citizen of the United States who is twenty-one

years old, who has resided in the State a year, in the county ninety days, and in the township thirty days, is entitled to vote at town-meeting; but a year's residence in the town is required for eligibility to office. At two o'clock the moderator calls the meeting to order for the consideration of business pertaining to those subjects already enumerated. Everything is done by the usual rules and methods of parliamentary bodies. The clerk of the town is secretary of the meeting, and preserves a record of all the proceedings. Special town-meetings may be held whenever the supervisor, clerk, and justices, or any two of them, together with fifteen voters, shall have filed with the clerk a statement that the meeting is necessary, for objects which they specify. The clerk then gives public notice in a prescribed way. Such special meetings act only upon the subjects named in the call.

The supervisor is both a town and a county officer. He is general manager of town business, and is also a member of the County Board, which is composed of the supervisors of the several towns, and which has general control of the county business. As a town officer, he receives and pays out all town money, excepting the highway and school funds. His financial report is presented by the clerk at town-meeting. The latter officer is the custodian of the town's records, books, and papers.

The highway commissioners, in their oversight of roads and bridges, are controlled by a large body of statute law, and by the enactments of the town-meeting. Highways are maintained by taxes levied on real and personal property, and by a poll-tax of two dollars, exacted from every able-bodied citizen between the ages of twenty-one and fifty. It may be paid in money, or in labor under the direction of the commissioners. One of the commissioners is constituted treasurer, and he receives and pays out all road moneys.

The supervisor acts as overseer of the poor. The law leaves it to be determined by the people of a county whether the separate towns or the county at large shall assume the care of paupers. When the town has the matter in charge, the overseer generally provides for the indigent by a system

of out-door relief. If the county supports the poor, the County Board is authorized to establish a poor-house and farm for the permanent care of the destitute, and temporary relief is afforded by the overseers in their respective towns, at the county's expense.

The Board of Town Auditors, composed of the supervisor, the clerk, and the justices, examine all accounts of the supervisor, overseer of poor, and highway commissioners; pass upon all claims and charges against the town, and audit all bills for compensation presented by town officers. The accounts thus audited are kept on file by the clerk for public inspection, and are reported at the next town-meeting.

The supervisor, assessor, and clerk constitute a Board of Health. The clerk records their doings, and reports them at the meeting of the town.

No stated salaries are paid to town officers. They are compensated according to a schedule of fixed fees for specific services, or else receive certain *per diem* wages for time actually employed in official duties. The tax-collector's emolument is a percentage.

The Justices of the Peace have jurisdiction in minor criminal cases, in civil suits, when the amount in controversy does not exceed the value of two hundred dollars, and in all actions brought for violation of city or town ordinances.

For school purposes, the township is made a separate and distinct corporation, with the legal style, "Trustees of Schools of Township —, Range —," according to the number by which the township is designated in the Congressional Survey. The School Trustees, three in number, are usually elected with the officers of the civil township at town-meeting, and hold office for three years. They organize by choosing one of their number President, and by selecting some fourth person for School Treasurer, who shall also be, *ex-officio*, their secretary. They have authority to divide the township into school districts. It must be remembered that the township is exactly six miles square. It is the custom to divide it into nine districts two miles square, and to erect a school-house near the centre of each. As the county roads

are in most instances constructed on the section lines—and therefore run north and south, east and west, at intervals of a mile—the traveller expects to find a school-house at every alternate crossing. The people who live in these sub-districts elect three school directors, who control the school in their neighborhood. They are obliged to maintain a free school for not less than five nor more than nine months in every year, are empowered to build and furnish school-houses, hire teachers, and fix their salaries, and determine what studies shall be taught. They may levy taxes on all the taxable property in their district, but are forbidden to exceed a rate of two per cent. for educational or three per cent. for building purposes. They certify to the township school treasurer the amount they require, and it is collected as hereafter described. This last-named officer holds all school funds belonging to the township, and pays out on the order of the Directors of the several districts.

The township funds for the support of schools arise from three sources. (1) The proceeds of the school lands given by the United States Government, the interest from which alone may be expended. (2) The State annually levies on all property a tax of one-fifth of one per cent., which constitutes a State school fund, and is divided among the counties in the ratio of their school population, and is further distributed among the townships in the same ratio. (3) Any amount needed in addition to these sums is raised by taxation in the districts under authority of the directors.

All persons between the ages of six and twenty-one years are entitled to free-school privileges. Women are eligible to every school office in the State, and are frequently chosen directors.

The average Illinois county contains sixteen townships. The county government is established at some place designated by the voters, and called the "county seat." The corporate powers of the county are exercised by the County Board, which in counties under township organization is composed of the several town supervisors, while in other counties it consists of three commissioners elected by the

people of the whole county. The Board manage all county property, funds, and business; erect a court-house, jail, poor-house, and any necessary buildings; levy county taxes, audit all accounts and claims against the county, and, in counties not under township organization, have general oversight of highways and paupers. Even in counties which have given the care of highways to the townships, the County Board may appropriate funds to aid in constructing the more important roads and expensive bridges. The proceedings of the Board are recorded by the County Clerk, who also draws orders on the Treasurer for all claims which they have audited and allowed. In his office, official bonds and other important papers are filed and recorded.

The treasurer, sheriff, coroner, and surveyor are county functionaries, who perform the duties usually pertaining to their offices. The County Superintendent of Schools has oversight of all educational matters, advises town trustees and district directors, and collects complete school statistics, which he reports to the County Board, and transmits to the State Superintendent of Public Instruction.

Every county elects a judge, who has full probate jurisdiction, and appoints administrators, executors, and guardians. He also has jurisdiction in civil suits at law involving not more than $1,000, in such minor criminal cases as are cognizable by a justice of the peace, and may entertain appeals from justices' or police courts. The State is divided into thirteen judicial districts, in each of which the people elect three judges, who constitute a Circuit Court. The tribunal holds two or more sessions annually in each county within the circuit, and is attended at every term by a grand and a petit jury. It has a general original jurisdiction, and hears appeals from the County Judge and from Justices' Courts. To complete the judicial system of the State, there are four Appellate Courts and one Supreme Court of last resort.

Taxes, whether for State, county, or town purposes, are computed on the basis of the assessment made by the Town Assessor, and are collected by the Town Collector.

The assessor views and values all real estate, and requires from all persons a true list of their personal property. The assessor, clerk, and supervisor constitute a Town Equalizing Board, to hear complaints, and to adjust and correct the assessment. The assessors' books from all the towns then go before the County Board, who make such corrections as shall cause valuations in one town to bear just relation to valuations in the others. The County Clerk transmits an abstract of the corrected assessment of the county to the Auditor of State, who places it in the hands of a State Board of Equalization. This board adjusts valuations between counties. All taxes are estimated and collected on this finally corrected assessment. The State authorities, the county board, the town supervisors, the highway commissioners, the township school trustees, and the proper officers of incorporated cities and villages, all certify to the county clerk a statement of the amount they require for their several purposes. The clerk prepares a collection book for each town, explaining therein the sum to be raised for each purpose. Having collected the total amount, the collector disburses to each proper authority its respective quota.

In all elections, whether for President of the United States, representatives of Congress, State officers, or county officers, the township constitutes an election precinct, and the supervisor, assessor, and collector sit as the election judges.

The words "town" and "township," as they occur in this article, signify a territorial division of the county, incorporated for purposes of local government. There remains to be mentioned a very numerous class of municipal corporations known in Illinois statutes as "villages" and "cities." A minimum population of three hundred, occupying territory not more than two square miles in extent, may, by popular vote, become incorporated as a "village," under provisions of the general law. Six village trustees are chosen, and they make one of their number president, thereby conferring on him the general duties of a mayor. At their discretion, the trustees appoint a clerk, a treasurer, a street commissioner, a

village constable, and other officers, as they deem necessary. The people may elect a police magistrate, whose jurisdiction is equal to that of a justice of the peace. When a territory not more than four square miles in extent contains at least one thousand inhabitants, the general law provides for organization and incorporation as a "city." Its government will consist of a mayor and aldermen, who constitute the city council. Cities whose population does not exceed three thousand, are divided into three wards, each ward electing two aldermen. The number of wards and aldermen increases in the ratio of population. Mayor and aldermen are elected for two years. The mayor has a veto on the ordinances of the council, though he may be overruled by a two-thirds vote. The council controls a wide range of subjects, which are specified in the statutes of the State. They manage the city's finances, appropriating money, levying taxes, and borrowing money—though the city's total indebtedness may never exceed five per cent. of its assessed valuation. Their authority extends to streets, gas and water supply, parks, harbors, markets, cemeteries, public amusements, the liquor traffic, police and police courts, jails and workhouses, the fire department, and numerous other city interests. They have power to make ordinances, and affix penalties, not exceeding six months' imprisonment, or a fine of two hundred dollars. Other city officers vary with the population, and need not be enumerated.

These incorporated villages and cities remain parts of the civil township, and share in the burdens and privileges of town government. They also remain parts of the school township, and are subject to the general provisions of the school law, excepting that in school districts containing more than two thousand inhabitants the three district directors are superseded by a board of education consisting of six members, and of three additional members for every ten thousand of additional population. Such districts must support schools from six to ten months in the year, may be divided into sub-districts, and may employ a superintendent of schools.

Such is a synopsis of local self-government in Illinois; and such, with more or less important differences, are the minor political institutions of nearly every State in the Union. Without a high conception of their influence no just estimate of the American character is possible. They have been the training-school for popular rule and representative institutions. They have acquainted the masses with principles of practical politics, and have given them that "habit of political debating and acting which is essential to the training of intelligent and useful citizens." The township system, Old England's best gift to the nation, has always been the groundwork and basis of democracy in America.

LOCAL SELF-GOVERNMENT IN PENNSYLVANIA.

Few perhaps fully realize the importance of a comprehensive study of local institutions. The centralizing tendencies of the present time are so strong, that the attention of the student of political science is apt to be concentrated upon federal rather than on local authority. He is prone to overlook the fact that the nation is a highly composite organism of which the state, the county, and the township, are subordinate, but very essential members. He is liable to forget that an inadequate or improper performance of functions by the latter is attended by an infusion of disorder, which interrupts the harmonious workings of the whole.

The scope of the present paper will not extend beyond a sketch of those three departments of local management embraced under the heads of Rates and Levies, Roads and Bridges, and the Poor. The early administration of colonial justice has already been treated in an excellent essay on the "Courts of Pennsylvania in the 17th Century," by Mr. Lawrence Lewis, Jr., while the question of Public Schools will be reserved for future discussion.

Before proceeding to give a minute description of Local Self-Government as at present administered in the Quaker State, we shall briefly consider its institutional development. Institutions are not the creations of a single mind nor the products of a separate age. They represent a growth, an evolutionary process. They are the great unities of history. They progress as the social order changes, and we must diligently study their varying stages of development to intelligently comprehend their present character.

In the first place, we shall portray the method of local administration which obtained when the Duke of York possessed the territory which now comprises the States of

New York, Pennsylvania, Delaware, and part of New Jersey. We venture to do so because of the interest such a sketch will afford from an historical point of view, and also because it will furnish an excellent parallel to the later system of Pennsylvania under Proprietary government. Moreover, the Duke's "Book of Lawes," with few exceptions, formed the legal basis of the proceedings of the courts upon the Delaware after the year 1676.[1] We shall speak more particularly of these courts in relation to their legislative character in a subsequent part of the present paper. They claim our attention because they possessed not only judicial functions, but exercised in addition an important control over local affairs, during the years which immediately preceded the arrival of William Penn.

The administration of the Duke of York was a close imitation of the English system. It recognized the old municipal divisions of ridings, towns, and parishes. The chief officer of the former was a High Sheriff, while the interests of the latter were presided over by a Constable, and a Board of Overseers, at first eight, but afterwards four in number. The sheriff was selected yearly by the governor from three nominees presented to him by the justices of the last sessions. The town officers were directly the choice of the people. The constable was chosen for one year; the overseers for two, one-half of them retiring annually. Under this primary colonial régime the principal unit of local government was the town or parish. Each town had its own peculiar constitution and by-laws, which, when sanctioned by the court of sessions, became the basis of its own administration. Such constitution and laws were framed by the constable and a majority of the overseers, and local observance became binding upon local inhabitants. Every town had likewise

[1] That these enactments were in force in 1676 is clear by the following. It was one of the provisions of the "Book of Lawes" that, "no jury shall exceed the number of seaven nor be under six unless in special causes upon Life and Death." This year, at Whorekill, in a suit about some tobacco, "the president of the court and six, of seven of the jury, acknowledged their proceedings to be erroneous, etc."—Hazard, Annals of Pennsylvania, p. 425.

its own court,[1] held at convenient intervals, where small cases were heard and decided by its officers. The constable and overseers were also, *ex-officio*, church-wardens, and in this capacity were the ecclesiastical governors and moral guardians of the parish. They not only made provision in the rates for the support of the church and minister, but it was their further duty to make known to the semi-annual court of sessions all unpunished transgressions of the moral code.[2]

There were two taxes, the public charge, the proceeds of which were applied to the maintenance of the general civil, military, and ecclesiastical authority; and the town rate, which went to the support of purely local government. Both were levied and collected in exactly the same manner. Upon the receipt of a "precept" from the sheriff of the riding, the constable and overseers of the various towns made out a list of taxable persons and appraised all real and personal property. These statements were returned to the sheriff, who having examined and certified them, transmitted them to the governor. If any inhabitant thought he had been unfairly dealt with in his assessment, he could make complaint to the court of sessions, and there have his grievance redressed. The law which governed collections reads as follows: "The constable shall appoint a day and place and give reasonable warning to the inhabitants to bring in their proportions, upon which every man so warned shall duely attend to bring in his rates, etc."[3] Constables were held responsible for the

[1] The "Towne Court" of the Duke's Laws is a very ancient institution. It is the court of the tithing or township transformed. It represents the survival of the Anglo-Saxon "tun-gemot." The establishment of these local self-governing communities in the English colonies of America, is simply a repetition of the course pursued by our Saxon forefathers, in their settlement of Britain.

[2] This kind of censorship was exercised, during the first few years of Proprietary rule, by the Grand Jury. For an example, see Watson, Annals of Philadelphia, vol. ii. p. 91.

The following presentment at the Chester Co. Court, in 1683, though of a quite different character, is somewhat amusing: "The Grand Jury present want of rings to the snouts of swine."

[3] Duke of York's Laws, pp. 49, 50.

collection of the rates, and were empowered to recover arrearages by process of law, even after their term of office had expired. When the full amount of the levy could not be obtained, the deficiency was supplied by an extra assessment. Produce was received instead of money, in payment of the town and public taxes. None were exempt from taxation except justices of the peace and indigent persons, and even the justices were subsequently made liable for the town levy. Local taxation was designed chiefly for the support of the poor and for the maintenance of parochial churches.[1] The needy and the helpless of every parish were the especial charge of the church wardens. They were doubtless considered more in the light of an ecclesiastical than a civil responsibility. Under this régime, we see that county government in the form we now know it, did not practically exist. The riding, it is true, came in as a division between the town and the province, but it had little or no significance as a political factor. It simply represented an aggregation of towns or parishes, and possessed no organized system of municipal government. That such was the case is shown by the following law regarding lunatics. "That in regard the conditions of distracted persons may bee both very chargeable and troublesome, and so will prove too great a burthen for one towne alone to beare, each towne in the rideing where such person or persons shall happen to bee, are to contribute

[1] "Churches shall be built within three years after this assize, to which end a Towne Rate may bee made, to begin with this yeare."—Duke of York's Laws, p. 63.

Upon the Delaware, ministers seem to be have been supported by voluntary subscriptions. The petition of the Court of New Castle to the governor in 1678 was to the effect that he would "grant leave and permission to obtain and have an orthodox minister, to be maintained by the gift of the free and willing givers."—Hazard, Annals, p. 455. This request was granted.—*Ibid.* p. 458.

Ministers who were supported out of the "Towne Rate," elsewhere in the Duke's dominions, could not always have been in the established church, since, according to the report of Bishop Compton in 1680, there were at that time only *four* clergymen of the Church of England in North America. —Hazard, Annals, p. 469.

towards the charge which may arise upon such occasions."[1] Each town, therefore, helped to bear the burden, but the contributions were made distinctly and separately, and not as individual quotas to a permanent county rate. The town or parish was of much greater importance than in later times. It dealt with the leading questions of local government, and its constable and overseers formed a legislative body whose acts, as we have already seen, could only be disallowed by judicial negation.[2]

After the conquest of the Dutch settlements upon the Delaware by Sir Robert Carre, in 1664, it was agreed that the magistrates then in power should be continued, for a time at least, in the enjoyment of their civil jurisdiction. In 1668 we have the record of the constitution of a court, consisting of a schout and five counsellors, appointed for two years.[3] English laws were not immediately imposed upon the people, but it was ordained that the Duke's enactments "be showed and frequently communicated to the said counsellors, and all others, to the end that being therewith acquainted, the practice of them also in convenient time be established."[4] The result thus gradually aimed at was finally consummated by the precept of 1672, which declared "English laws to be established in the town and river. The office of schout to be converted into sheriff for the corporation and river, to be chosen annually."[5] In 1676 a proclamation from Governor Andross set forth that the Duke's "Book of Lawes," with the exception of the enactments regarding constables'

[1] Duke of York's Laws, p. 64.

[2] "The Constable by and with the consent of five at least of the overseers for the time being, have power to ordaine such and so many peculier Constitutions as are necessary to the welfare and improvement of their Towne and if any inhabitants shall neglect or refuse to observe them, the Constable and overseers shall have power to Levie (such) fines by distress; Provided that they (the constitutions) bee not of a Criminall Nature and that every such peculier Constitution be confirmed by the Court of Sessions within four months (later by the next Court) after the making thereof."—pp. 50, 51.

[3] Hazard, Annals, p. 371.

[4] Ibid. p. 372.

[5] Ibid. p. 397.

courts,[1] county rates, and a few other matters which pertained particularly to Long Island, should form the basis of civil administration along the Delaware. There were at this time three general courts in operation: one at New Castle, one at Upland, and one at Whorekill. These establishments were not only of a judicial nature, but were also endowed with legislative authority. They could enact "all necessary by-laws or orders (not repugnant to the laws of the governor), to be binding for the space of one whole year,"[2] for the administration of local matters within their respective districts. They had power to make "fitting rates for highways, poor, and other necessaries."[3] This levy, on account of convenience, generally took the form of a poll-tax;[4] the constables making out the list of "tydables."[5] It was the duty of the sheriff to make collections.[6] No rates could be laid until the sanction of the governor had been obtained.[7] For the better management of roads and bridges, the court appointed yearly a number of men to be overseers of highways and viewers of fences.[8]

The court also ordered the building and repair of churches[9] and selected the church wardens.[10] No mention is made of the manner in which the poor were taken care of, but it is altogether likely that they were the charge of the church

[1] It is reasonably certain, that, notwithstanding Gov. Andross' proclamation, constables' courts were in full operation upon the Delaware. One had been established at New Castle in 1672 (Hazard, Annals, p. 396–7), and we have no record showing that it ceased to exercise its powers after the above-mentioned ordinance was promulgated. On the contrary, the order issued in 1677, that the *commons* were to be regulated by the town, shows that New Castle still had some kind of separate government. In 1678, permission was given to Elseburgh, a place within the jurisdiction of the justices of New Castle, to have a constable's court. (Hazard, Annals, p. 458–9.) The record of the establishment of these courts in America furnishes one more example of the reproduction of English institutions upon colonial soil. The evidence of their survival is a point of some historical interest, as it makes against the idea of Stubbs and Hallam, who are inclined to deny that the petty constable ever possessed judicial authority.

[2] Hazard, Annals, p. 427. [3] Ibid. p. 441. [4] Ibid. p. 447.
[5] Ibid. p. 442. [6] Ibid. p. 447. [7] Ibid. p. 428.
[8] Ibid. p. 480. [9] Ibid. p. 467. [10] Ibid. p. 461.

wardens, as in New York. Though the court had the power to lay a road-tax, we find no record that such a course was pursued. It was the survival of an old feudal custom in England which compelled all the inhabitants of a particular district to work upon the highways or else to suffer certain pecuniary penalties in case they failed to fulfil the requirement. This system was in vogue in the time of Charles II.,[1] and we have evidence that it also obtained in Pennsylvania. "The imposition of a fine of 25 gilders, for neglecting to work on the roads, was among the last acts of Upland Court under the Duke's government."[2]

The tenth section of the charter to William Penn gave him the power to divide "the country and islands into towns, hundreds[3] and counties." By a subsequent clause he also received authority to erect manors,[4] and to introduce thereon

[1] See Statutes of the Realm, 22 Charles II., ch. 12, § 10, for fines imposed. In case the labor required by statute was not sufficient to complete all necessary repairs, a tax could be imposed to defray the expense of finishing the remaining work.—Ibid. § 11.

[2] Smith, History of Delaware Co., p. 124.

[3] We have not been able to find any evidence to show that hundreds ever existed as local divisions in Pennsylvania, although they were common in Maryland and Delaware.

[4] Mr. F. D. Stone, Librarian of the Pennsylvania Historical Society, has called our attention to what *may have been* a manor in full operation upon a similar basis to those in England. It is cited in Dr. George Smith's History of Delaware County. It bore the name of the Welsh Barony, and consisted of a tract of land comprising about 40,000 acres. The settlers were Welsh Quakers, and amongst other immunities granted to them by their charter, was the privilege to have "our bounds and limits by ourselves, within the which all causes, Quarrels, crimes, and titles [shall be] tryed and wholly determined by officers, magistrates [and] jurors of our own language, which are our equals."

Tradition has it that a certain stone building situated upon the manor of Moreland, was used in early times as a prison-house for the refractory tenants and servants of the first Chief Justice. The whole subject is an exceedingly interesting one, and will claim the attention of the writer in a future paper. The subject of the Manorial System of Maryland is under investigation by Mr. John Johnson, a graduate of the Johns Hopkins University. Mrs. Martha J. Lamb has undertaken the "Historic Manors of New York."

the English system of manorial government. We have seen that the tendency of the Duke of York's laws was to centre local government in the towns. Under the Proprietary administration a totally different order of things was instituted. The county now became the element of primal importance. In fact it may be safely asserted, that, during nearly the entire portion of the first half-century of the government of Penn and his descendants, the town had little or no significance as a political division. The county court of general sessions was the real centre of authority, and all local affairs were administered by officers which it commissioned.[1] Though the town was afterwards admitted to a share of municipal government, it has never quite regained the position it held previous to 1682. We shall further notice, in passing, how some matters were gradually handed over, conditionally, to township control.

By an act passed in 1682, which was subsequently declared a fundamental law, it was enjoined that no separate tax at any time should continue longer than one year. The objects for which county taxes were raised, were "for the support of the Poor, building of prisons, or repairing them, paying the salary of members belonging to the assembly, paying for Wolf's Heads, expence of Judges, with many other necessary charges."[2] It was the duty of the justices of the court of sessions, with the assistance of the grand jury, to estimate the general county expenses, and to make an assessment, upon the basis of the provincial tax, to defray them. The enactment of 1696 inaugurated a much more convenient system. It provided that six assessors should be annually chosen for each county, to act in conjunction with the justices and grand jury, in determining public charges. This body could levy a rate of one penny in the pound, and six shillings *per caput* upon all freemen between 16 and 60 years of age. The

[1] "The court about this time (1685) appointed the justices, constables, road overseers, etc."— Watson, Annals of Philadelphia, vol. i. p. 304. Seven years later, in one county at least, the road overseers were elected by the people.—See Records of Chester Co. Court for 1692.

[2] Laws of the Province of Penna., 1682–1700, p. 233.

assessors heard and decided all appeals. The Proprietary and his deputies were alone exempt from taxation. It was the duty of the various constables to bring the assessors a list of the taxable inhabitants of their districts, together with an accurate valuation of property liable to taxation. The assessment board determined the required number of collectors and appointed them. The county treasurer was also an appointee of this body. It seems that the above method for raising county rates did not prove satisfactory, since numerous supplemental acts were passed to make provision for the collection of arrearages.

In 1724 a new system was introduced, which, though not unlike the former in its essential features, yet prescribed a mode of procedure somewhat different from that recognized by previous law. It provided for the election of three commissioners to perform the functions which had hitherto belonged to the court of sessions, with a few additional duties. The commissioners issued the "precepts" to the constables, constituted a tribunal for trying appeals, inaugurated proceedings against delinquent collectors, and imposed pecuniary penalties upon the county treasurer, and the assessors for neglect of duty. To facilitate the collection of rates, each county was divided into a definite number of districts. The limit to the assessment provided for by this enactment, was fixed at three pence in the pound, and a nine shillings poll-tax.

The Revolution did not change the form of local government, which had obtained immediately before the year 1776. There was no distinct difference between the administration of the province and of the commonwealth. But in relation to the topic at present under consideration, an advance was made towards the present system in 1779. In that year the assessment board, consisting of the three commissioners and six county assessors, appointed[1] two assistant assessors for each township, to discharge the duties which had hitherto devolved upon the constables, in making the returns of taxable inhabit-

[1] These officers were afterwards elected by the people.

ants and property. By this act stringent measures were also adopted for collecting unpaid rates. If settlement was not made within thirty days, the delinquent's goods could be sold; and if, after three months' time, his obligations had not been met, his real estate could be seized and disposed of by the commissioners to satisfy the claim. The office of clerk of the commissioners, or county clerk, which still exists, was first inaugurated at this time. Supplemental legislation this same year enacted, that the *owners* and not the *occupiers* of real estate should be taxed. Afterwards a proviso was introduced which caused all local rates to be assessed upon the basis of the last State tax. The principle of the division of labor was carried out in making the assessment, each county assessor, with the two assistants, instead of the whole board, performing this duty for every separate district. Collectors were now appointed by the commissioners alone. A return of all county levies was required to be made annually to the general assembly.

In early colonial times the management of roads and bridges was vested in the county. All public highways were laid out by order of the governor and council,[1] while private roads, connecting with them, and cart-ways leading to landing-places, were opened-up at the instance of the court of quarter sessions,[2] if the viewers had previously made a favorable report upon the projected enterprise. Roads and bridges were made at the expense of the county; but it was not unusual for a lottery[3] to be established to liquidate the cost of the undertakings. The court named the overseers,

[1] Colonial Records, vol. i. p. 163.

[2] The court gave the order to proceed with the work, after the grand jury had presented the need of a new road. Smith (Hist. Del. Co., p. 163) quotes from the Chester County Court records the following: "The road from Darby to Haverford to be laid out by the grand jury and other neighbors." In 1699, six viewers were appointed to do work of this kind; or rather to make a report upon proposals regarding new roads.

[3] Lotteries were often made use of to raise funds to open roads, construct bridges, and build churches. For legislation authorizing these establishments, see Laws of Pennsylvania.

and these officers were responsible for the good repair of all highways within their territorial limit. Every freeholder was compelled when summoned to work upon the roads, under penalty of a fine if he refused to obey. Later enactments transferred highways from county to township supervision, directing that the latter should assume all financial burdens entailed in their management. The overseers or supervisors were thenceforth township officers, and two were elected annually for each municipality. They were empowered to levy a road tax, within certain limits, after having obtained the requisite permission from two justices of the peace. They could also hire laborers to repair highways and bridges if they thought fit, instead of summoning the inhabitants to do the work as heretofore.

The Poor question has occupied the attention of the lawmakers of Pennsylvania to a considerable extent; and much legislation is to be found upon the subject among the acts of the general assembly. In early times numerous experiments were tried, but the law of 1771 seems to have been the one, which, on the whole, yielded the most satisfactory results. It does not differ very materially from the present poor law of the State. At an earlier period charity had been dispensed at the instance and discretion of the county court; the funds being supplied out of the regular county rate. The poor tax had preference over all others, and was first paid in the disbursement of the moneys. A curious expedient was resorted to to prevent undeserving persons from receiving public support. Every recipient of relief was obliged to wear a badge "with a large Roman (P) together with the first Letter of the name of the county, city, or place, whereof such poor person is an inhabitant, cut either in red or blue cloth."[1]

[1] It was customary in England, in addition to the ordinary punishment, to mark criminals with the initial letter of the crime for which they had been convicted. This proceeding was also followed in Pennsylvania. A part of the sentence against Long Finne, for his rebellious acts, was that he should be "branded on the face with the letter R." Hazard, Annals, p. 378. See also Records of Chester Court, January 1, 1693, for the punishment accorded to a woman who had been found guilty of fornication.

The act of 1771 provided for the appointment of two overseers in each township, by the justices of the peace, at a yearly meeting specially convened for the purpose. These officers could, with the authority of two justices, levy a three-penny rate on property, and a six shillings poll-tax as often as was thought advisable. The amount thus raised was employed to provide subsistence, shelter, and employment for all those whom misfortune had made a burden to society. The tax was recoverable by ordinary process of law, and was levied on the same basis as the county dues. The overseers were responsible for the collection of the amount assessed, and if they refused to pay over moneys in their possession, they were deemed guilty of a misdemeanor and punished with imprisonment. They were required to keep an account of all receipts and expenditures, and their books were audited by three freeholders annually chosen by the people. A list of the poor was kept on record, and an order from a justice of the peace was necessary for the inscription of new names therein. Strongly protective measures were adopted against the growth of pauperism, as for example, the requirements for gaining a legal settlement in a township, and the restrictions attached to the removal of the poor from one district to another. New-comers had to bring with them certificates, and householders must give notice of the arrivals of guests coming from any place outside of the province, except Europe. Any one, to become legally settled, must have been an office-holder for one year, or must have resided in the same locality at least two years, and contributed to the poor fund. Widows were deemed settled in the same place as their former husbands, and indented servants must have performed one year of service in some particular locality to fulfil the required conditions of residence. All having near relatives who were paupers, were compelled by the province to support them, if in a position to do so. Notwithstanding all this defensive legislation, and despite the influence of these well-timed measures, it would appear that the demands upon public charity were augmented instead of diminished. Complaints were made from time to time that the means for supporting

the poor were entirely inadequate, and in 1779, an act was passed limiting the rate at seven shillings and six pence in the pound, and at not more than six pounds, and not less than three pounds per poll.[1]

The Present System.

Local self-government in Pennsylvania at the present time affords a peculiarly interesting study, representing as it does a condition of affairs in which neither the town polity of New England nor the county administration of the South, forms the decidedly predominating element. It occupies the middle-ground between these two opposing phases of local life. In the Southern States the county is the more important factor, and its subdivisions are such only in name, exercising but little control over their own affairs. In New England, on the contrary, the highest political vitality is to be found in the town. The system of Pennsylvania aims at a partition of powers. The officers of the township assume the management of local roads and highways, and in some counties provide also for the support of the pauper population. But while they have the power to impose a tax for these purposes, rates can only be levied upon the basis of the last adjusted county assessment, and the law prescribes certain limits beyond which they cannot go. Furthermore, no pro-

[1]An explanation of this seemingly high rate is to be found in the fact, that the continental currency had that year reached a very low state of depreciation. There has been preserved in the Library of the Pennsylvania Historical Society, a copy of a publication called the United States Magazine, bearing the date of 1779, for which the subscription rates were $3.00 per copy or $24.00 a year! It is possible that the apparently high price charged for this periodical may have been due, in some degree, to its widespread popularity, and to the extraordinary demand indicated by the following lines, taken from the dedicatory ode:—

> "Statesmen of assembly great;
> Soldiers that on danger wait;
> Farmers that subdue the plain;
> Merchants that attempt the main;
> Tradesmen who their labors ply;
> These shall court thy company;
> These shall say, with placid mien,
> Have you read the magazine?"

vision is made for any such democratic institution as a town-meeting, where the people may come together to vote appropriations, and to frame by-laws for their own government. Neither is the township represented by a supervisor upon the county board, as in New York, Michigan, Illinois, and other of the Northern and North-Western States. The county is the leading local unit, and, under the commonwealth, may be said to wield the largest share of political power. It regulates affairs directly, and its officers are responsible to the people for the exercise of administrative control. The chief authority is vested in three commissioners, who are elected for a term of three years. In addition to duties which will be subsequently mentioned, this board is required to transact the county business, to keep a record of its proceedings, to publish annually a correct account of all receipts and expenditures of the previous year, to make an annual statement to the secretary of the commonwealth of all sums paid for the support and maintenance of justice, and to have charge of the erection and control of the county public buildings. Each county has also a treasurer, a surveyor, and three auditors. It is not necessary to define the duties of these functionaries. We do not include in this enumeration those offices which pertain to the administration of justice, as it is our intention to confine this discussion to purely municipal matters.

A board of supervisors, generally two or three in number, constitutes the highest township authority. But this numerical limit is not absolute, since the law provides for an increase at the pleasure of the electors. The term of office of this governing board extends over a period of three years. There are also an assessor, two assistant assessors (in triennial years), a town-clerk, a treasurer, three auditors, and two overseers of the poor, where the poor are a township charge. Under a constitutional provision, the election of township officers takes place annually on the third Tuesday of February.

The county rates and levies are made in the following manner. Every third year the board of commissioners issues

a notice to the assessors of the different townships, requiring them to return, within a certain specified time, a correct list of the names of all taxable persons residing within their territorial jurisdiction. The assessors and their assistants immediately proceed to make out the required statement, and to furnish also an accurate valuation of such real and personal property as the law directs. Upon this basis, the commissioners levy a certain rate *per centum*, which rate is uniform throughout the different townships. The commissioners cause transcripts of the assessments to be prepared and furnished to each assessor, together with the rate *per centum* of the amount levied. They also fix a day on which appeals shall be heard. The assessor is then required to give notice, either written or printed, to every taxable inhabitant in the township, of the amount for which he stands rated, and to inform him also of the day set for hearing appeals. All objections raised to the assessment are decided by the commissioners; but if any inhabitant takes exception to their ruling, he may present his case for final judgment before the court of common pleas. The taxes thus levied are collected by a collector for each township, appointed by the board of commissioners. The selection is usually made in accordance with the recommendation of the various assessors, though the range of choice is not necessarily limited to such nominees.

The State taxes are furnished through the medium of the several counties, and the commissioners perform the same duties in relation to their levy and collection, and the same proceedings are had regarding appeals, as in the case of county rates.

The township has the power to lay certain rates independently of county authority or jurisdiction. For instance, the supervisors are authorized to assess the taxables of their township for a sum not exceeding one cent on the dollar upon the valuation of their property, to keep the roads, highways, and bridges in good order. It is also the duty of the overseers of the poor, where the poor are in the charge of the township, to make a similar provision for the support of the indigent and helpless, having first obtained the consent of

two justices of the peace. These rates can only be laid in accordance with the last adjusted county valuation. The township assessor aids in fixing the assessment, and collection is made by persons designated by the supervisors and overseers, in a meeting convened for the purpose.

Roads and highways lying within the boundaries of a township are under its management. They are controlled by the supervisors, and the expense of their good keeping is borne out of the fund raised by the above-mentioned assessment. It is allowable for any person to work out his road-tax instead of paying it in money. This is usually done. With this fact in view, and with the poor more generally in the care of the county, it will be seen that the tendency is to reduce purely township rates to a minimum. The supervisors are also responsible for the repair and renewal of all causeways and small bridges situated on township highways. If a road forms the dividing line between two townships, the expense of its good keeping is shared equally by the two districts. When a number of inhabitants think it is advisable that a new highway should be opened up, they send a petition to that effect to the court of quarter sessions. This judicial body at once appoints viewers, who proceed to inspect the locality through which it is proposed the road shall run. They make their report to the court, and if a favorable view is entertained, the road is confirmed and viewed to be opened. Damages, to be paid by the county, may be awarded for any injury to property, even though the owners were petitioners in behalf of the project. Bridges over large rivers or streams, which would entail more expense in construction than it is reasonable should be borne by one or two townships, are built at the cost of the county. Proceedings are instituted at the order of the court of quarter sessions, who act upon the representation of the township supervisors, or a petition of interested inhabitants.

The poor are legally a township charge; though their care is generally placed in the hands of the county commissioners. In the latter event, the commissioners, with the approval of the court of quarter sessions, select suitable real estate, and erect thereon a building called a "House for the

Destitute." This establishment is used for the accommodation of all poor persons who have gained the required legal settlement. Three citizens, one of whom is chosen every year, constitute a board of directors. This body manages the internal economy of the institution. It also has authority to bind out children as apprentices and to provide employment for the able-bodied poor. The directors furnish a yearly financial estimate to the commissioners, so that due provision may be made for a poor-fund in levying the county rate. The board is further empowered to make any suggestions which they may deem expedient, for improvements or alterations in the institution. It may grant relief, to a limited extent, to needy persons who are not inhabitants of the almshouse. The judges of the various courts of the county, and ministers of the gospel of all denominations are, *ex officio*, visitors of the institution. In this capacity they are entitled to examine into its general condition, and to scrutinize the books of the board of directors. As soon as the poor become the charge of the county, the office of overseer in the different townships is abolished.

When the poor are under the control of the township, their care is entrusted to two overseers, and their maintenance provided for by means of a small tax. The overseers are obliged to furnish relief to all applicants for assistance, who have gained a legal settlement in the township. Aid must also be given to those who have not a legal settlement, until they can be removed to their former place of residence. The duties of the overseers in relation to binding out children as apprentices, and finding suitable work for those capable of active employment, are similar to those devolving upon the county directors. No one is entitled to be placed upon the poor-book without an order from two justices of the peace. Every house-keeper receiving a transient poor person is required to give notice to the overseers within ten days after such reception, or, in case of default, to become responsible for all further maintenance.

A few isolated and comparatively unimportant exceptions may occur to the method of local administration as set forth in the preceding pages. These need not demand our present

consideration. A general likeness pervades the municipal organization of the State, and the foregoing sketch represents, as accurately as possible, that system which prevails throughout the commonwealth of Pennsylvania.

Passing in rapid review the facts which have just claimed our attention, we cannot help noticing the liberal methods which, from the very first, existed in the administration of local affairs. The control over matters pertaining to self-government was not given to individual isolated communities, as in New England; nor was it concentrated in the larger unit, the county, as in Virginia and Maryland. And yet the system of Pennsylvania was quite as democratic as the one, and as healthfully centralized as the other. The power to make by-laws for municipal management, as well as the authority to legislate for the entire province, was, from the beginning, in the hands of the people or their delegates. All public officers were either elected directly, or chosen by those who were. Penn himself could not appoint even a justice of the peace. The words of the historian Bancroft are strictly true: "But for the hereditary office of *Proprietary*, *Pennsylvania* had been a representative democracy."

The present system of local self-government does not belong entirely, nor even largely, to the period of the commonwealth. It has, of course, been improved and modified by enactments since 1776, but, as a whole, it is simply the continuation of provincial beginnings. The central idea upon which it is based has been the same throughout. That idea is the inalienable right of the people to a control over their own affairs, and may, doubtless, to some extent, be considered as the practical realization of the words of Penn: "If the people want anything which will make them happy, I shall readily grant it." The great principle of popular sovereignty was virtually recognized by the illustrious founder of this State in every department of its provincial administration; and upon this foundation principle the political superstructure of Pennsylvania has slowly and surely risen, until now it may well be called the keystone of the arch of American Liberty.

Johns Hopkins University,
May, 1882.

IV

SAXON TITHING-MEN

IN AMERICA

"Imposuerunt justiciarios super quosque x frithborgos, quos decanos possumus dicere, Anglice autem *tyenthe-heved* vocati sunt, hoc est caput x."—*Law of Edward the Confessor.*

"Praesit autem singulis hominum novenis decimus."—*Law of Henry I.*

"A Tything-man in each Manor, a Constable in each Hundred."—*Bacon, Laws of Maryland, 1638.*

"See to it that there bee one man appointed to inspect the ten families of his neighbours, which tything man or men . . . . haue power, in the absence of the constable to apprehend . . . ."—*Colonial Law of Massachusetts, 1677.*

Tithing-Men are still annually chosen in the Town-Meetings of Northampton, Massachusetts.—*Town Records, 1882.*

"The History of Institutions . . . . abounds in examples of that continuity of life, the realisation of which is necessary to give the reader a personal hold on the past and a right judgment of the present. For the roots of the present lie deep in the past, and nothing in the past is dead to the man who would learn how the present comes to be what it is."—*Stubbs, Constitutional History of England.*

JOHNS HOPKINS UNIVERSITY STUDIES
IN
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HERBERT B. ADAMS, Editor

History is past Politics and Politics present History — *Freeman*

IV

SAXON TITHING-MEN

IN AMERICA

Read before the American Antiquarian Society, October 21, 1881

BY HERBERT B. ADAMS, Ph. D.

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TITHING-MEN.

THE office of Tithing-man has never been satisfactorily explained. New England traditions describe this institution only in its later ecclesiastical form, which was by no means its primitive character even in this country. The oldest people in New England remember the Tithing-man as a kind of Sunday Constable, whose special duty it was, in the old parish meeting-house, to quiet the restlessness of youth and to disturb the slumbers of age. Many are the tales which grandfathers can tell concerning this ancient watchman of the congregation, who saw to it that all persons were attentive except himself, and who occasionally broke the peace by sharply rapping with his tune-book and pointing at some whispering boy, or else by patrolling the aisles to arouse sleeping saints by means of his black pole, tipped at one end with brass.[1] In some churches there were two or three

[1] This was the old English Tipstaffe, an emblem of the constabulary office, and representing the person of the King. We shall consider the subject of the Tipstaffe or Black Rod more particularly in a paper on "Constables." By the Province laws of Massachusetts (I. 155, 329) Tithing-men were required to "have a black staffe of two feet long, tipped at one end with brass about three inches, as a badge of their office." We find these black staves mentioned in local town records, *e. g.*, in the town records of Salem, in 1646, i. 147; in the town records of Groton, edited by Dr. Green, i. 19, Item, "toe black staffe," three shillings sixpence. Survivals of these black wands have been seen by the writer in actual use by special constables at Amherst College Commencements, which are still held in the old parish church. The use of wands, with ribbon tips, by ushers, is only an æsthetic transformation of the ancient Tipstaffe. It is said that in some early New England parishes, the Tithing-man's rod was tipped at one end, not with brass, but with a squirrel's tail. This end was used in awakening women. The other end was a deer's hoof, which carried sharp conviction to men and boys.

of these grim, vigilant Tithing-men. It is said that one or two of them sometimes sat under the very shadow of the pulpit, facing the congregation.[1] But more usually one Tithing-man sat at each door of the meeting-house to keep out dogs, and one often sat in the gallery to keep in boys.[2]

From original town records it appears that it was the duty of the early New England Tithing-man, not merely to preserve order in the meeting-house, but to see to it that every one went to church. The Tithing-man was a kind of ecclesiastical "whipper-in." After looking over the congregation to find if any seats were vacant, the Tithing-men would steal out and explore the horse-sheds, the adjoining fields and orchards, the inns and ordinaries, and even the houses of the village, in order to search out skulkers from divine service. According to the town records of Salem, it is clear that as early as 1644, in that village at least, two men were "appointed euery Lord's day to walke forth in the time of God's worshippe, to take notice of such as either lye about the meeting-howse without attending to the word or ordinances, or that lye at home or in the fields, w'thout giuing good account thereof, and to take the names of such persons & to present them to the Magistrate, whereby they may be accordinglie proceeded against."[3]

A study of the statutes of the mother country, of the period immediately preceding the Puritan migration, shows that the custom of enforcing attendance upon church services

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[1] Blood. History of Temple, N. H., p. 87.

[2] In the town of Salem, the Tithing-men or Constables, used to see to it that no boys escaped from church and that no dogs slunk in. The "Dog Whipper" was a regular institution in certain old English towns, notably in Exeter and Congleton (in Chester). Mr. Edward A. Freeman has called our attention to a curious law of Edgar (see Thorpe's Ancient Laws and Institutes of England, ii. 251), whereby parish priests were to see to it that no dog should enter church, nor yet more a swine, if it could possibly be prevented!

[3] Town Records of Salem, 131, part 1, 1634–1659, published in the Historical Collections of the Essex Institute, second series, Vol. I.

was by no means original with the settlers of New England. By an Act[1] passed in the reign of James I., all people were obliged by law to "repaire every Sunday" to church, under penalty of twelve pence for every absence. Upon sufficient information, given of course by the Parish Constable or Tithing-man, the justice of the peace issued a warrant to the church warden to distrain goods, if necessary, in collecting such parish fines. All servants, sojourners, and strangers within a man's gates were brought under the operation of this law, so that the custom of Sunday inspection of every household must have been in vogue in Old England, long before it was revived at Salem. These laws requiring church attendance are of very ancient standing. By the first Act of Elizabeth's reign, "every person and persons inhabiting within this Realme—shall diligentlye and faithefully, having no lawfull or reasonable Excuse to be absent, endevour themselves to resorte to theyr Parishe Churche or Chappell accustomed—upon every Sondaye and other dayes ordeined and used to bee kept as Holy days, and ther tabyde orderlye and soberly during the tyme of the Common Prayer, Preachinges and other Service of God — upon payne of punishment by the Censures of the Churche, and also upon payne that every person so offending shall forfeite for every suche offence twelve pens, to be levied by the Churchewardens of the Parishe — to thuse of the Poore."[2] The Church of England and its Puritan reformers can claim no monopoly in this kind of legislation, for it roots far back in the middle ages in the earliest Catholic laws of England against irregular attendance upon conventicles contrary to the Catholic faith, especially against the meetings of Lollards.[3]

In early New England, the execution of the laws for the

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[1] Statutes of the Realm, 4 Jac. I. c. v.

[2] Statutes of the Realm, 1 Eliz. c. 2, III.; cf. 23 Eliz. c. i. and 35 Eliz. c. i.

[3] Rolls of Parliament, III., 467, 583; IV., 24.

observance of the Sabbath in other ways than church-going was intrusted to the local Tithing-men. Travel on that day was strictly forbidden. There are many persons still living who can remember that the parish Tithing-man once discharged the pious function of stopping all unnecessary riding and driving on Sunday. An amusing story is told of the writer's grandfather, who was Tithing-man for his parish in Amherst, Massachusetts, and notoriously strict in the discharge of his office both in church and out. Early one Sabbath morning he saw a man driving past his house, with a little hair-trunk in the back end of his wagon. Suspecting that the man was upon a journey, the Tithing-man hailed him: "Sir, do you know that travel on Sunday is forbidden by law?" "Yes, sir," said the stranger in a somewhat melancholy tone. The Tithing-man caught the idea. "Of course," he said, "in case of sickness or death, a Sabbath journey is sometimes permitted." The traveller replied in a subdued manner, "my wife is lying dead in the town just above here." "Oh, well," said the Tithing-man, "you can drive on." The man drove on a safe distance, then looked back and called out: "She has been lying dead for twenty years!"

The law against Sunday travel has been rigidly enforced, in one way or another, by Tithing-men, Constables, local police, or local opinion, down to the present day in many parts of New England. The late Brasseur de Bourbourg, who made Mexican antiquities his life study, once told the writer of an unhappy experience in Boston forty years ago, in trying to procure a carriage on the Sabbath, for the sake of visiting some Catholic dignitary. But neither Catholic nor Protestant England has set Puritan New England a liberal example in the matter of Sunday laws. Moncure D. Conway, in a recent letter to the *Cincinnati Commercial*, narrates the serious difficulty encountered by three American travellers in attempting to procure a Sunday dinner in London, and that after attending church. Not only are Sunday

accommodations for travellers very much restricted to this day in many parts of old England, but travelling itself on the Sabbath has been more or less restrained by law, ever since the time of the Saxon kings, in whose good Catholic reigns Sunday used to begin on Saturday at sunset, and close Sunday evening.[1] The statutes of England at the time the Puritans came over, are full of legislation against breach of the Sabbath by travellers, traders, drovers, butchers, laborers, boatmen, wagoners, and by conveyances of every description.

From the colonial laws of Massachusetts it appears that the functions of the Tithing-man were not restricted to the arrest of "all Saboath breakers," but extended to the inspection of licensed inns for the sake of discovering "disorderly tiplers" on the evening of that day or "*at any other time*" during the week. He could carry offenders before any magistrate and commit them to prison "as any constable may doe." For Sunday offenders was reserved the special disgrace of imprisonment in the town "cage" which was "set up in the market place."[2] Even by such links as these are the towns of New England bound to old English parish life.[3] The expression jail-bird has some significance in the light of the evolution of prisons from cages. The use of the pillory and the stocks in punishment for drunkenness are similar links of parish habit. The very liquors that New England Tithing-men were instructed to seek out in unlicensed houses or to obtain a satisfactory account of in regular inns, afford as suggestive a commentary upon the English origin of intemperance in New England as does the mention of beer in the Norse sagas of Vineland upon the Teutonic origin of the first white settlers

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[1] Lingard. History and Antiquities of the Anglo-Saxon Church, I., 309–11.

[2] Records of Massachusetts, v. 133.

[3] Palgrave, English Commonwealth. Anglo-Saxon Period. Vol. ii., p. clxvi.

of America. "Strong beere, ale, cider, perry,[1] matheglin,[2] rumme, brandy,"[3] these things all have a very English smack. Legislation against the excessive use of these drinks did not begin in New England. The Puritans of Massachusetts struggled against intemperance as did their English fathers before them, and in precisely the same way, by fines and penalties, by laws executed through "Constables, Churchwardens, Headboroughes, Tithing-men, Alecunners and Sydemen," as described in the act of the fourth year of King James I.[4]

It is perhaps not generally known that the office of Tithing-man in early New England was very like that of a parish constable, of which office, indeed, the former is the historical prototype. In Massachusetts, and elsewhere in New England, the two institutions long continued to exist side by side, although as far as local and colonial records give any decisive evidence, Constables were appointed long before Tithing-men. But the latter is by far the more ancient office in the mother country, and it may have been revived by local hamlets in New England, years before it was formally recognized in town or colony records. The Tithing-men had many functions in common with Constables. Both endeavored to repress tippling, gaming, night-walking, strolling, begging, roaming streets or fields, and idleness in general. They were to see to it that every man was about some lawful and useful business. They restrained

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[1] A liquor prepared from the juice of pears, like cider from apples.

[2] A fermented liquor made of honey and water boiled together. The name Metheglin is Welsh and is derived from medd (mead) and llyn (liquor). It is one of those familiar household terms which have come down to us from that "exterminated" race, the Kelts. Words like dad, babe, lad, lass, gown, flannel, clout, crock, cabin, basket, bran, flask, mattock, are collectively stronger evidence of Keltic influences surviving in Saxon homes than even the above home-made drink.

[3] Records of Massachusetts, v. 240.

[4] Statutes of the Realm, 4 Jac. I. c. v. Cf. I. Jac. I. c. 9.

butchers and drovers from cruelty to animals, and kept boys and "all persons from swimming in the water."[1]

The Tithing-man may be distinguished from the Constable by the fact that the former's duties related more especially to the control of family life and of the morals of his neighborhood. The Tithing-man's power came nearer *home* than did that of the Constable; it reached over the threshold of every family in the hamlet; it was patriarchal, fatherly, neighborly, in the strictest sense. The Tithing-men visited Cotters to see if they kept Saturday night. The Tithing-man saw to it that family government was maintained; that all single persons were joined to some family; that children and servants were properly taught and trained at home; that the same were kept from all disorderly, profligate, idle, uncivil and rude practices abroad; in short, that the whole community grew up as one united family in the nurture and admonition of the law.[2] The Tithing-man was the father of the hamlet; he felt himself personally responsible for the character and conduct of all households in his neighborhood. In point of fact, the Tithing-man was held strictly to account by the Selectmen, or Townsmen, for the presence of any new-comer into his hamlet. By a town order of Dorchester, in the year 1678, it was required "that the tithingmen in their seuerall presincts should inspect all inmats that doe come into each of their presincts, either single persons or famelies, and to giue spedy information therof vnto the Select men from time to time or to some of them that order may be taken about them."[3]

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[1] See references to next paragraph.

[2] Records of Massachusetts, v., 241. Acts and Resolves of the Province of Massachusetts Bay, i., 58, 59, 60. Hudson's History of Lexington, 69.

[3] Fourth report of the Record Commissioners of Boston, Dorchester Town Records, 223. Compare the duty of constables as stated in the statute of Winchester (1285) to "present all such as do lodge strangers in uplandish towns, for whom they will not answer." Statutes of the Realm, i., 98.

The Tithing-men were not appointed by the Selectmen, and possibly they were not originally chosen in town meeting, but elected by neighborhoods or hamlets.[1] By an Act of the General Court of Massachusetts in 1679 "the selectmen of each toune take care that tything men be annually chosen *in their seuerall precincts* of their most prudent & discreet inhabitants, & sworne to the faithfull dischardge of their trust."[2] Tithing-men were empowered, like Constables, to assist one another in their several precincts, "and to act in one anothers precincts w'th as full power as in their oune, and yet to reteyne their speciall charges w'thin their oune bounds."[3] It is a very remarkable fact, which, as far as we know, has entirely escaped attention as regards its historical significance, that the Tithing-man of Massachusetts was originally the head man of *a neighborhood of at least ten families.* This was the revival in all its purity of the Saxon Tithing, an institution more ancient than towns or parishes, a patriarchal institution underlying all local forms of Saxon self-government. It was the unit of the Hundred, which archaic type of organization is still known in Delaware and remembered in Maryland, a subject which we shall soon investigate. In 1638 a bill was introduced into the General Assembly of Maryland providing for "a Tythingman in each Manor" and "a Constable in each Hundred."[4] There can be no doubt as to the perpetuation of the Saxon Tithing in New England, although in the South it does not appear to have been so common as the Hundred. By an Act of the Massachusetts Colony as late as 1677 the selectmen of every town then existing in Massachusetts were ordered "to see to it that there bee one man appointed *to inspect the ten families of his neighbours.*"[5] Such was the

[1] In later times, Tithing-men were always elected in town meeting. See Acts and Resolves of the Province of Massachusetts Bay, i., 155, 328.

[2] Records of Massachusetts, v., 240.

[3] Ibid., 155.

[4] Bacon, Laws of Maryland, 1638, ch. ii., 12.

[5] Records of Massachusetts, v., 133.

original character of the Tithing-man's office in New England as well as in Old England. Arnold has probably gone wrong in his History of Rhode Island[1] in connecting the duty of Tithing-men with that of collecting tithes. The correspondence of names was purely accidental. In this view, we are supported by Mr. Edward A. Freeman, who says there is no historic connection between Tithes and Tithing-men.

In Plymouth Colony, the Saxon Tithing was reinstated for the government of the Indians. It was ordered that in each town where Indians dwelt that every tenth Indian should be appointed Tithing-man by the Court of Assistants. His duty was to have the care and oversight of his nine men and to present their faults and misdemeanors to a so-called "overseer," who received his commission from the governor.[2] This was precisely like the duty of the Tithing-men of Old England at the time the Pilgrims came over. English Tithing-men were required by law to report to the justice of the peace the names of all rogues and vagabonds apprehended, punished or sent to the house of correction. Courts of law were actually introduced among the Indians of Plymouth Colony, the white settlers considering, very wisely, that such a course would have "a good tendencye to the ciuilliseing of the said Indians."[3] In a letter of the Reverend Mr. Treat, of Eastham, to the Reverend Increase Mather, this good missionary remarks, that there are five hundred Indians in his township. "They have four distinct assemblies, in four villages, in which they have four teachers of their own choice. . . . There are also six justices of the peace, or magistrates in these villages, who regulate their civil affairs, and punish criminals and transgressors of the civil law. They have three stated courts, and other inferior officers."[4] These were probably Tithing-

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[1] Arnold, History of Rhode Island, ii., 161.
[2] Plymouth Colony Laws, 253.
[3] Ibid., 239.
[4] Pratt, History of Eastham, Wellfleet and Orleans, 38.

men. Indians, like white men, were strictly watched on the Sabbath. They were forbidden to hunt or fish, to plant or hoe corn, to carry burdens, or "to doe any seruill worke on the Lord's day."[1]

There are some rather curious facts concerning this condition of practical Indian serfdom in the towns of Plymouth Colony. By a system of courts and Tithing-men, the Indians were brought as completely under the subjection of the whites as were ever the subdued Britains under the Saxons, or the conquered Saxons under the heel of their Norman lords. And it is very interesting to observe that, in all three instances, the servile population was held down by the very same means. Indians were not only restrained from their natural freedom by these Tithing-men, but were to a great extent reduced to "seruill worke" and the "carrying of burthens," at first, probably by a kind of voluntary enthrallment for the sake of protection, like the Saxon freemen, then by the slowly increasing pressure of the law. The following extract from the Plymouth records is very interesting in the light of comparative jurisprudence, particularly in the light of the Fugitive Slave law, "if any Indian who is a servant to the English shall run away amongst any Indians, such Indians whither such a runaway Indian is come, shall forthwith giue notice of the said Runaway to the Indian Constable [or the Tithing-man] whoe shall immediately apprehend such Indian servant, and carry him or her before the Ouerseer or next Majestrate, whoe shall cause such servants to be whipt and sent home by the Constable to his or her master, whoe shall pay said Constable for his service ——."[2] It is also worthy of note that Indian captives, taken in war, were sent South and sold as slaves to the Bermudas.[3] Indians were also sold for debt or theft, at public auction,

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[1] Plymouth Colony Laws, 60.

[2] Ibid., 255.

[3] Ibid., 242. King Philip's son was sold into slavery in the Bermudas.

by the Constable of Plymouth towns.[1] We have in New England an interesting survival of this old Saxon custom in the practice of farming out the labor of the town's poor to the highest bidder. Convict labor, southern chain-gangs, and Delaware whipping-posts, all repose upon the same solid Saxon ground, *servitude to the law.* It is folly to heap reproaches upon the Pilgrim Fathers or upon any generation of men. We Americans, whether in the North or at the South, are of the same English blood; we have inherited kindred institutions, with much the same virtues and about the same vices.

Tithings and Tithing-men were no development of New England Puritanism. These institutions for the strict and wholesome government of neighborhoods were transmitted to us from the mother country. We may perhaps discover the first step of the transmission process in the instructions given to Governor Endicott, in 1629, by the Massachusetts Company while they were yet in England. This business association of honorable and enterprising Englishmen, who, according to their own accounts, provided for New England, "Ministers, men skylfull in making of pitch, of salt, Vyne Planters,—Wheat, rye, barley, oates,—stones, of all sorts of fruites,"[2] this thoughtful Company provided also the seeds of English self-government in Towns and Tithings. They said to Endicott by letter, "wee hope yow will fynde many religious, discreete, and well ordered persons, wch yow must sett over the rest devyding them into famylies, placing some wth the ministers, and others under such as, beeing honest men (and of their owne calling as neere as may bee) may haue care to see them well educated in their generall callings as Christians, and particuler according to their seuerall trades or fitness in disposition to learne a trade."[3] To any one familiar with the English law of that period con-

[1] Plymouth Colony Laws, 237.
[2] Records of Massachusetts, i., 24–5.
[3] Ibid., 393; cf. 397, 400, 405.

cerning the training of servants and apprentices, the above instructions to Endicott, which are repeated over and over again, will appear to be only the natural outgrowth of the family regulations of the mother country.

In the library of the Massachusetts Historical Society at Boston is preserved a curious little volume in old English black-letter, on "The Dvties of Constables, Borsholders, Tythingmen, and such other lowe and Lay Ministers of the Peace, by William Lambard, of Lincolnes Inne, Gent, London, 1614." Published before either Pilgrims or Puritans came over and possibly brought to this country by one of the first settlers (for another of the writings of this same William Lambard was owned by Adam Winthrop and was brought over by his son, Governor John Winthrop, together with the Charter of Massachusetts), the above treatise must be an important and trustworthy source of information as to the exact nature of these offices in Old England at the period of their transmission to the New World. It appears that there were many variations of the name of Tithing-man in the mother country, just as in the Town Records of Groton, carefully edited according to the original spelling, by Dr. Samuel A. Green, we find a great variety of terms, from Tidingman and Tighing man to Tiethengman and Tiethenman.[1] In Saxon Law we find Tineman, Tynmanna, Teothungman, Teothungmannus. In mediæval Latin occur Decanus, Decimus, Decimalis Homo. We also find Head-Borough, Head-Boroughman, Borough Elder, Borsholder (Borhs-Ealdor) or the Elder of the Pledge, Chief of the Pledge, Capitalis, Princeps Plegii, and the like. These names we have gathered from many different sources, but they are all intelligible in the light of the following extract from Lambard's Constable: "Now whereas every of these tithings or boroughs did use to make choice of one man amongst themselves, to speak, and to do, in the name of

[1] Green. The early Records of Groton, Massachusetts, 101, 108, 112, 116, 125.

them all; he was therefore in some places called the Tything-man, in other places the Borough's elder (whom we now call Bors-holder), in other places the Boro-head or Head-borough, and in some other places the Chief-pledge; which last name doth plainly expound the other three that are next before it; for Head or Elder of the Boroughs, and Chief of the Pledges, be all one."

This extract from Lambard we have taken from Toulmin Smith's work on the Parish (230), showing that Lambard is recognized as good authority by one of the best modern writers upon the subject of English local institutions. Blackstone based his account of "Constables" and "Justices of the Peace" upon Lambard, and scarcely ever went back of the latter's authority. But Lambard while trustworthy in matters belonging to his own time, is to be read with great caution and in the light of modern research as regards all questions of Saxon antiquities. The following extracts from Lambard we have made from the edition of the Duties of Constables, now preserved in the library of the Massachusetts Historical Society. He says, "In some of the Westerne parts of England where there be many Tythingmen in one parish, there only one of them is a Constable for the King, and the rest do serue but as the ancient Tithingmen did." Lambard also says, "In some shires, where euerie Third borow hath a Constable, there the officers of the other two be called Third borowes." The latter office is the same as that of Tithing-man. Although not everywhere taking the name of Petty Constable, which was a term introduced by the Normans, the Saxon Tithing-man acquired under the Norman régime certain constabulary functions, and these we have partly noticed in our account of the New England Tithing-man. Lambard says the Tithing-man really combined two offices "the one being his ancient and first office, and the other his later made office." Upon the basis of original records and of an unpublished manuscript account of constabulary duties, which was brought over to

this country by one of the early settlers of Dorchester, we shall treat of the office of "Constables" in a special monograph, to be published by the New England Historic-Genealogical Society.[1] We are here concerned with the ancient Tithing-man, who was the father of the Norman petty constable and the grandfather of New England selectmen.

According to Lambard, the ancient office of Tithing-man was headship of the Frank-pledge. This is not the whole truth, for the institutions of Tithing and Tithing-men are older than that of Frank-pledge. Canon Stubbs[2] and George Waitz,[3] the most recent authorities upon English and German constitutional history respectively, maintain that, before the Norman conquest, there is no positive proof of the existence of collective responsibility for crime committed within a Tithing. On the other hand, Palgrave[4] and the older authorities are inclined to discover germs of the system of Frank-pledge even in Anglo-Saxon times. By a law of Canute, every freeman who desired to enjoy the privilege of exculpation by the oath of his friends or the protection of *Wer-geld* (money payment for injury) was to be enrolled in a Hundred and in a Tithing; he was to be brought under pledge or "Borh," and this was to hold him to right. The term Frank-pledge is a vulgar corruption of the Saxon *Frith-borh* or peace-pledge. Whether or no the outgrowth of Saxon beginnings, this institution in Norman times was certainly the collective personal pledge of ten or more men to their lord. The idea of associate re-

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[1] Historical and Genealogical Register, April and July, 1882.

[2] Stubbs' Constitutional History of England, i., 87.

[3] Waitz, Deutsche Verfassungsgeschichte, i., 458 (ed. 1865.) Waitz takes strong ground: "Es gab keine Gesammtbürgerschaft unter den Angelsachsen, weder für das Wergeld noch in irgend welchem andern Sinn, weder vor noch nach Aelfreds Zeiten."

[4] Palgrave, English Commonwealth, part ii., cxxiii. "The system was developed between the accession of Canute and the demise of the Conqueror; and it is not improbable that the Normans completed what the Danes had begun."

sponsibility is here of more importance than the mere number, for as many as eighty men were sometimes admitted into one Tithing. Ten was the least number allowed in Frank-pledge.[1] Probably the Normans infused greater energy into the Saxon Tithing and gave to the idea of *Frith-Borh* a more strictly collective sense, as a better surety for the preservation of the peace.[2] The old Saxon Tithing-man certainly became the Borhs-Ealdor (the Borsholder of Lambard) which signifies the same as the Elder or Chief of the Pledge.

The custom of Frank-pledge and the relation of Tithing-man to the same are well described in the laws of Henry I, and also in those of Edward the Confessor, both of which collections, however, belong to a period later than the time of the kings whose names they bear. In the laws of Henry there is an ordinance relating to the Hundred, giving special authority, if necessary, to all freemen, whether retainers or men having their own hearthstone (*heorthfest*), to convene twice a year in their own Hundred, for the purpose of ascertaining whether the Tithings are full, whether any have withdrawn, if so, how and why, and whether any have been added. It was enjoined, moreover, that a Tithing-man (*decimus*) preside over every nine men, and one of the better sort over every Hundred, who should be called an Alderman (*aldremannus*)[3] and take diligent care to promote the execution of law, whether human or divine.[4]

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[1] Palgrave, ii., cxxv.

[2] Dr. Reinhold Schmid, in his edition of the Gesetze der Angelsachsen (ed. of 1858, p. 649) calls attention to the fact that we have no evidence of the Normans possessing any such institution as Frank-pledge in Normandy and says: "So weit unsere Kunde von dem Verhaeltniss bis jetzt reicht, bleibt daher der angelsaechsische Ursprung der Zehntbuergerschaft das Wahrscheinlichere." To this conclusion we had already come before discovering Schmid's note upon "Rechtsbuergschaft," but we gladly rest our results upon his solid authority.

[3] "Vocabantur eldereman, non propter senectuten sed propter sapientiam." Law of Ed. Con. (Thorpe, i., 456.)

[4] Ancient Laws and Institutes of England, i., 515; also in Stubbs' Select Charters, 106.

The law of Frank-pledge, or Frith-Borg, ascribed to Edward the Confessor, was not framed until the twelfth century. We adopt Kemble's translation: "Another peace, the greatest of all, there is whereby all are maintained in firmer state, to wit in the establishment of a guarantee, which the English call Frithborgas, with the exception of the men of York, who call it Tenmannetale, that is, the number of ten men. And it consists in this, that in all the vills throughout the kingdom, all men are bound to be in a guarantee by tens, so that if any one of the ten men offend the other nine may hold him to right."[1] The custom of viewing Frank-pledge in the court leet or popular court of the manor, for the purpose of seeing that the tenantry are properly enrolled in Tithings, is said to prevail in Yorkshire to this day.[2]

The origin of Tithings, and of their multiple the Hundred, is one of the most obscure questions in the early history of English institutions. Blackstone and the earlier writers dispose of the question very summarily by ascribing the above types of local organization to Alfred: "to him," says Blackstone, "we owe that masterpiece of judicial polity, the subdivision of England into tithings and hundreds, if not into counties." The monkish testimony of Ingulph, upon which this widely accepted statement rests, is utterly worthless upon this point. It was customary in the Middle Ages to ascribe every good institution either to Alfred or to Edward the Confessor. If pious monks and popular opinion are to be followed in institutional history, then we must ascribe to King Alfred the origin of trial by jury. As an able critic, presumably Palgrave, said years ago in the Edinburgh Review,[3] if Alfred was really the

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[1] Ancient Laws and Institutes, i., 450. Kemble, Saxons in England, i., 249–50.

[2] Stubbs' Constitutional History of England, i., 88, note 4.

[3] Edinburgh Review (Feb. 1822), p. 289; cf. Hallam, Middle Ages, note vi. to ch. viii., part II.

originator of Hundreds and Tithings, and shires, "he must also have been the creator of the common law itself, which only proceeds in conjunction with these divisions." The fact is, Blackstone and the older writers, Coke, Littleton, Bracton, knew really very little about the origin of English institutions. The whole science of institutional history is one of modern growth and can be pursued only in the light of comparative politics and of comparative jurisprudence, along lines of inquiry opened up by such pioneer investigators as Von Maurer, Hanssen, Nasse, Waitz, Gneist, Stubbs, Freeman, Maine, and specialists in Anglo-Saxon law. The study of Saxon institutions was not possible before the labors of Palgrave, Kemble, Thorpe, and Reinhold Schmid in classifying materials and editing statutes and codices. But with all these modern facilities, it is not easy to trace out to one's entire satisfaction the origin of England's early institutions of law and government.

We find Tithings mentioned in the law of Canute already cited. We can trace back the institution through several Saxon reigns, but finally we lose all trace of it. Among the laws of Edgar, in the ordinance relating to the Hundred it is ordered that if a thief is to be pursued, the fact is to be made known to the Hundredman and he is to inform the Tithing-man, and all are to "go forth to where God may direct them," so that they "do justice on the thief, as it was formerly the enactment of Edmund."[1] Here, if we mistake not, we are upon the historic track of the old Saxon Hue and Cry. We note from the laws of Edgar that "if the hundred pursue a track into another hundred,"[2] warning is to be given to the Hundredman there, so that he may join in the chase. Following a track from one Hundred into another would seem to imply territorial limits. In the laws of Edgar, it is also prescribed that no one shall take possession of unknown cattle "without the testimonies of the men

[1] Ancient Laws and Statutes of England, i., 259.
[2] Ibid., 261.

of the Hundred, or of the Tithing-man."[1] In the laws of Athelstan, among the so-called *Judicia Civitatis Lundoniæ* it is ordered that, in tracing or pursuing a criminal, every man shall render aid, "so long as the track is known; and after the track has failed him, that one man be found [from one Tithing] where there is a large population, as well as from one Tithing where a less population is, either to ride or to go (unless there be need of more)."[2] This appears to imply a territorial seat even for the Tithing, as an integral part of the Hundred, as well as a varying number of inhabitants within the Tithing itself.

Probably the Saxon Tithing had its origin in the personal association of warriors by tens and hundreds. Such a decimal system of military organization existed among various early Teutonic peoples, if not throughout the whole Aryan family of nations. Even the Jews fought by tens, and fifties, and hundreds. Undoubtedly kinship had originally something to do with the marshalling of hosts. The Homeric warriors fought under patriarchal chiefs. The ancient Germans, according to Tacitus, were arrayed by families and near kinsmen (*familiae et propinquitates*).[3] And it is not at all unlikely that, after the conquest of Britain, the Saxons settled down in Tithings and Hundreds upon somewhat clannish principles. Of course the composition of the host, when levied, would vary from time to time, but a certain idea of territorial permanence would soon attach itself to the local Tithings and Hundreds from the very fact of the allotment of lands.

There seems to be great reluctance on the part of German

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[1] Ancient Laws and Institutes of England, i., 261.

[2] Ibid., 233; cf. ii., 499 and Schmid, Die Gesetze der Angelsachsen, 161.

[3] Tacitus, Germania, cap. 7. Prof. W. F. Allen, in a note upon this passage, in his edition of the *Germania*, calls attention to the parallel passage in Cæsar, *de bello Gallico*, vi., 22, where it is stated that land was assigned *gentibus cognationibusque hominum*. "From the two passages, it appears that the divisions of land, and military divisions, were alike founded upon Kinship."

specialists like Gneist and Schmid to admit that the Saxon Tithing ever became territorial before the Norman conquest, after which time Schmid,[1] at least, concedes the existence of the territorial Tithing, although he, like the rest of the German critics, continues to distinguish very sharply between the local Saxon Tithing and the purely personal Frank-pledge. Stubbs, the best English authority upon the subject of Saxon institutions, says that Tithings of a territorial character exist to this day in the western counties of Somersetshire,[2] Wiltshire, Gloucestershire and Worcestershire, and in all counties south of the Thames, except Cornwall and Kent. Stubbs, who follows Pearson upon this point, says the Tithings of some counties answer to the township of others. This statement and the researches of Pearson, in the text of his Historical Maps of England during the first thirteen centuries,[3] uncover a secret which none of the German writers appear to have discovered. They deny the existence of a territorial Tithing among the Saxons, because the name does not occur in the Domesday Book.[4] Toulmin Smith read the secret of the Tithing in his researches into the history of the English Parish and it will be as clear as daylight to anyone reflecting upon the natural relation of the personal Tithing to its landed domain. A group of at least ten families, a Tithing of inhabitants, constituted a Saxon Township, which is the secular basis of the ecclesiastical Parish.

We cannot enter in this connection upon the subject of

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[1] Schmid, Die Gesetze der Angelsachsen, 648.

[2] Mr. Edward A. Freeman says he lives in the Tithing of Burcott Somerleaze, Wells, County of Somerset, which Tithing, before the recent Highway Act of the Poor Law, used to meet and tax itself for local purposes. Notices of the meeting of the Tithing used to be posted, like the notices of a New England Town Meeting.

[3] Pearson, Historical Maps, 50–52.

[4] Gneist. Das Englische Verwaltungsrecht, i., 51. In den unendlichen Einzelheiten, welche das normannische Domesdaybook giebt, kommen die Worte *decania, decenna, teôthing, tything* auch nicht ein einziges Mal vor.

the transformations of Tithing, Township, and Parish, but shall one day do so more fully in papers upon the Origin of Northern Towns and Southern Boroughs. We call attention, however, to a few important and fundamental facts.

1. Many modern places in England, that are recognized as Tithings, end in the Saxon word *Ton*, meaning Town, *e. g.*, the Tithing of Alkington, in Berkeley Parish.

2. Many Tithings are geographically identical with Parishes, although many Parishes often include several Tithings.

3. Many names of English Parishes end in the Saxon *Ton* and correspond territorially with old Saxon Towns.

4. In the later part of the Middle Ages, taxation in England was levied upon Tithings, Towns, and Parishes; the existence of ten householders in a township or parish was the criterion of local liability to taxation.

5. The Tithing-man, and his historic kinsmen, the Town Reeve, and the Parish Constable, assessed and collected taxes.

6. The Saxon Tithing-man became the Norman Petty Constable. It is a principle of the common law that wherever there is a Petty Constable, there is a Parish.

The following extract from the Laws of Edward the Confessor (Thorpe I., 454), throws considerable light upon the functions of the English Tithing-man in the Middle Ages: *Cum autem viderunt quod aliqui stulti libenter forisfaciebant erga vicinos suos, sapientiores ceperunt consilium inter se, quomodo eos reprimerent, et sic imposuerunt justiciarios super quosque x. frithborgos, quos decanos possumus dicere, Anglice autem tyenthe-heved vocati sunt, hoc est caput x. Isti autem inter villas, inter vicinos tractabant causas, et secundum quod forisfacturæ erant, emendationes et ordinationes faciebant, videlicet de pascuis, de pratis, de messibus, de certationibus inter vicinos, et de multis hujusmodi quæ frequenter insurgunt.* Compare

Kemble, Saxons in England, I., 253. Spelman (Works II., 51) says, "every hundred was divided into many Freeborgs or Tithings consisting of ten men, which stood all bound one to the other, and did amongst themselves punish small matters in their court for that purpose, called the Leet, which was sometimes granted over to the Lord of Manours, and sometimes exercised by peculiar officers. But the greater things were also carried from thence into the Hundred Courts; so that both the streams of Civil justice and of Criminal did there meet, and were decided by the Hundreds—as by superior judges both to the Court Baron and Court Leet also." Then commenting on the above law, Spelman continues, "Edward the Confessor (LI., cap. 32) saith, that there were justices over every ten Freeborgs, called Deans, or Tienheovod (that is, head of ten) which among their neighbours in Towns compounded matters of trespasses done in pastures, meadows, corn, and other strife, rising among them. But the greater matters, saith he, were referred to superior justices appointed over every ten of them, whom we call Centurions, Centenaries, or Hundredors, because they judged over an hundred Freeborgs."

In the face of this testimony, it is difficult to understand how German critics and even Hallam (Middle Ages, ch. VIII., part 1) and Stubbs (Const. Hist. I., 90) can doubt that the Tithing-man settled small causes between man and man. The Selectmen of early New England Towns and the Parish Officers of Maryland had similar judicial functions. Upon the question of village-judgeship, Stubbs makes a very prudent modification of his first statement: "The Tithing-man is of course an elective officer. The idea that he was a sort of village-magistrate is without basis: although in a simple community of peasants the office of Constable, for such seems to have been the position of the Tithing-man, was held in more honour than it is now." Pearson, in his History of England (I., 252) says, "The only

popular magistrates in the country were—the Tithing and Hundred Reeves; the former were always, the latter mostly, elected by their respective communes. The smaller questions of debt and police were probably decided by these men in their respective courts; the freemen of the Tithing would meet as occasion required; the Hundred Court was summoned once a month." In the court of the Tithing we may discover the germ of vestry meeting and town meeting, and in Tithing-men, the origin of Select-vestrymen and Selectmen.

The Saxon Tithing-man was the Selectman of the Tithing. He was an elected officer, like the Petty Constable, who succeeded him. The mediæval Tithing-man's functions were patriarchal and authoritative. He was the Town Father in the true and original sense of that term. His relations were with families, as in early New England. He watched over his hamlet as the New England Tithing-man watched over his neighborhood and the congregation. He kept the public peace; he was arbiter between neighbors and kinsmen; he regulated the division of lands, the use of pastures and meadows; he announced the time of harvest and when enclosures were to be removed or fences put up. He was a man having authority in a small neighborly way. He foreshadowed the Petty Constable and the easy-going Selectmen of our modern New England Towns. But the main idea of his office was the same as that perpetuated in the original Tithing-men of New England, viz: elective, patriarchal headship over a neighborhood of *at least* ten families. This is the original, fundamental character of the office, considered as a local institution.

We have found the heart of our subject. We have stripped off the ecclesiastical tissue, which in later times enshrouded the New England Tithing-man, who is now undoubtedly dead. We have dissected away the outer layer of constabulary duties, and have found, in the patriarchal control of a Tithing, the real mechanism which for

many centuries gave such energetic life to the Tithing-man. The biologists in Baltimore have recently succeeded in isolating the mammalian heart, and in keeping it alive, by a transfusion of foreign blood, for hours after the rest of the body is entirely dead. Possibly by some such method of procedure, in the case of a live subject like the modern Constable or Selectman, we may derive a more intimate knowledge of that older institution, whose life is now beating on in kindred forms.

V

Local Government

IN

Michigan and the Northwest

[Extracts from the Ordinance of May 20, 1785, for ascertaining the mode of disposing of Lands in the Western Territory.]

"Be it ordained by the United States in Congress assembled, that the territory ceded by individual States to the United States, which has been purchased of the Indian inhabitants, shall be disposed of in the following manner:

"The surveyors . . . . shall proceed to divide the said territory into townships of six miles square, by lines running due north and south, and others crossing these at right angles, as near as may be,—

"There shall be reserved the Lot No. 16, of every township, for the maintenance of public schools within the said township."

[Extract from the Ordinance of July 13, 1787, for the Government of the Territory of the United States, north-west of the river Ohio.]

"Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE
HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

V

Local Government
IN
Michigan and the Northwest

Read before the American Social Science Association, September 7, 1882

BY EDWARD W. BEMIS, A.B.

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LOCAL GOVERNMENT
IN
MICHIGAN AND THE NORTHWEST.

Not long ago, at a college in a neighboring State, a professor proposed for debate, "Resolved, That the New England town-meeting should be abolished." In a class of nearly one hundred, not ten could be found willing to discuss the subject, and only one showed a comprehension of its general bearings—this in a New England college. So great ignorance, probably, does not prevail among those New England citizens whose duty at the polls has taught them something of the government of their town or city. Yet it is undeniable that few persons have any accurate knowledge of the local political institutions of other parts of the country than their own. For instance, in a recent conversation, a judge of acknowledged reputation for legal wisdom, in a State east of New York, a man even of legislative experience, said he was entirely unacquainted with the county government of the Empire State. A member of the supreme bench of one of the Northwestern States confessed to much the same ignorance respecting Ohio.

Nor is the reason for this ignorance far to seek. The importance of the subject is hardly yet realized. We seldom value or study what we share with all around us. If money for schools, for roads, or for the poor is raised in the same manner in our town and the next, in our county and beyond, we assume it is so with our State and its neighbor, with the East and the West, with Pennsylvania and Illinois, with New York and Missouri, or, if we learn of a difference, we imagine that ours must be the better. If we go to our libraries for information, we return no wiser than we went. As the old method of writing history was to narrate the exploits of kings and their armies, so the study of politics is still mostly confined to the doings of Reichstag, Parliament, Congress, State Legislatures and Common Councils.

Previous to 1872, when E. M. Haines, of Illinois, read a valuable paper before the Social Science Association, on the "Growth

of Township Organization in the West," scarcely anything on the subject of local government, save Professor Parker's paper in the Proceedings of the Massachusetts Historical Society on the Towns of New England, had been written in this country. With the exception of a brief article by Galpin, in Walker's Statistical Atlas in 1874, only two or three short articles have since appeared, although such writers as Bancroft and Freeman have borne testimony to the need of information upon this subject. Several men at the Johns Hopkins University are now pursuing their investigations in this direction, and their results will be published in a regular series of University Studies in Historical and Political Science.

Now, what is meant by local government, and why is its treatment so important? The government of the United States consists of four distinct centres of political power: the central power, with its seat at Washington; the State, with its important legislative powers; the county, the seat of many judicial powers; and, lastly, cities and villages, and those small incorporations, rarely more than thirty-six square miles in area, into which more than half the States of our Union are divided, and which, in the East, are usually called towns, and, in the West, townships. The assembling of the electors together in these small civil divisions, at annual or special meeting, for determining, not only what officers shall manage the affairs of the township, but, as in many States, how such affairs shall be managed, what taxes shall be raised for schools, roads, bridges, parks, commons, cemeteries, public buildings, and other subjects of local concern, determining, too, what by-laws they will have for their regulation, and, in short, how the prudential affairs of the township shall be managed in the manner most conducive to its peace, welfare and good order; all this has an influence upon the people, the importance of which cannot be overestimated. Of all the means of political education, none perhaps has been so effective in creating an interest in republican institutions, as well as in calling forth the intelligence necessary for their preservation, as the town-meeting.

It is not, however, to the town-meeting alone that we refer when we speak of local government, but to all agencies by which matters purely local in character, are taken from Federal or State jurisdiction and placed in the hands of the local authorities. County legislation and county powers, in so far as related to subjects of exclusively county interest, are just as much parts of local self-

government as the government of town, village, or city. Indeed, the increasing tendency to transfer power from the State to the county is very marked in some sections, and deserving of careful study. It needs but the slightest acquaintance with the workings of our State legislatures to convince any one that much of the corruption, the "log-rolling," and worse, which disgrace American politics, results from the control which is given to our legislatures over purely local matters by means of special legislation. Authority for building a bridge or house of refuge, erecting a town hall or a prison, is sought in the legislature, although only the one member from the district affected knows anything of the merits of the bill. If that member has already sold his vote, none of his associates are sufficiently acquainted with the measure to defeat it, but pass the bill out of courtesy, while individual responsibility for the corruption or misjudgment is lost in the numbers voting. Not so when these questions are brought before the local district which alone is interested. Every member of a county or township-board is acquainted with the measure under discussion, and popular condemnation follows close upon abuse of trust. The worst class of men seek to enter our legislatures because of the profitable measures requiring their approval, but which might better be adjusted in local assemblies. Illinois, fourteen years ago, by passing an act forbidding local bills and special acts of incorporation, and relegating all that was necessary to the local bodies, diminished her pages of statute laws from three thousand to two hundred. Understanding, then, the importance of local government, both for political education and pure administration of public affairs, it becomes of great interest to study our various systems of local self-government, both in their development, present condition, and probable future.

Although from the same stock, and subjects of the same laws, the settlers along the northern and southern portions of our Atlantic coast were led by circumstances, which we need not here discuss, to adopt very different systems of local government. At the beginning, the parish of South Carolina resembled the New England town, as a student from the Palmetto State has shown; but, by 1850, nearly all power in the South was concentrated in the State and county, while in New England the local unit endured. But town and parish were survivals of the old English and German village community. The theory of State rights was

a favorite one at the South, but decentralization of power, or local self-government, was much greater at the North.

We might study simple town government in New England, or its modified form in New York. But it would be as interesting, and more instructive, to any one investigating the ultimate effect of these institutions and their relative merits, if we could find some large area of country where the two systems of centralized and decentralized power have been brought together on a new field; and especially interesting would it be if any one method of government had gained the ascendency after a fair trial of strength. Such a country is that which was originally called the Northwest Territory, or that beyond the Ohio, land that is now divided into the five States of Ohio, Indiana, Illinois, Michigan and Wisconsin.

The French,[1] the early settlers of Michigan, and of a few places to the south and west, were never given local rights, but were under military and personal government. Land was granted on feudal conditions,[2] while trade was in the hands of a close corporation. One great trouble with the French settlements, and a chief cause of their decline, was their entire lack of local government. "The progress of France," says Lecky,[3] "in more distant quarters [than Europe] has been restricted by an incurable incapacity for successful colonization, due principally to the French passion for centralization and over-administration." French colonization in this country was contemporaneous with the increasing centralization of French institutions under Louis XIV. Everything must be done for the people, nothing by them. Modern French history is a sufficient commentary on such a system. With all local officers appointed at the capital, Paris was the most powerful corporation in the State. If the Parisians favored kingdom or republic, this was the government of France. The present stability of the French Republic is partly due to the powerful and awakened conservative influence of the peasantry, who are allowed far more local government than eighty years ago.

[1] For a very interesting account of French customs, character, mode of life, education, etc., see paper on The Early Colonization of Detroit, by Bela Hubbard, Michigan Pioneer Collections, Vol. I, pp. 347–368.

[2] This is well described in the early chapters of J. Campbell's valuable work, "The Political History of Michigan."

[3] History of England in the Eighteenth Century, Vol. I, p. 358.

The evils of centralized government increase directly with the separation of the governing and the governed. The effect is well described by Judge Campbell in a recent paper.[1] "A system of personal oversight," he says, "was maintained over every man who came into the country, and there is no instance recorded, and probably none existed, where any one ever settled down in the wilderness as a squatter or pioneer and cleared a farm for himself. There were no farming settlements except under restricted and fixed regulations, and every one who went into the country went as a roving adventurer, and not as a settler." Complete centralization left no room for independence.[2] The natural result was seen when invasion came. As long as the feudal lords were honest and patriotic, resistance to conquest was strong; but when those in authority proved false, the colonists fell helpless before the English, instead of resisting as did the settlers of the Atlantic coast in 1776.

Under British control there was still no local government in the Northwest. The governor and council had almost absolute power. There were less than four hundred Englishmen, and the idea that Frenchmen were entitled to representation, or even to the right of *habeas corpus*, was deemed preposterous. Partly in consequence of such facts, few settlers were attracted to this region, and population increased slowly.[3]

On the evacuation of the territory, in 1788, the country assumed the name of the Northwest Territory, and was organized in accord-

[1] Early French Settlements in Michigan. Pioneer Coll., Vol. II, p. 96.

[2] "Simple and frugal in their habits, contented with their lot, they renewed in their forest recesses of the new world, the life of the old. They were free from ambition and its cares, and without aims. While they enjoyed much personal license, they had no conception of municipal freedom and of self-government—of liberty regulated by law, originating from the will of the governed themselves. They received with equal and unquestioning submissiveness their law from the king and his subordinates, and their religion from their priests." The Northwest during the Revolution, by Chas. I. Walker. Mich. Pioneer Coll., Vol. III, p. 14.

[3] Many went to St. Louis, Arkansas and New Orleans. "Detroit, which had probably numbered more than 600 inhabitants in 1763, had but about 300 at the commencement of the Revolution. The whole Detroit settlement did not then exceed 700 or 800, in the place of 2500, as estimated by Rogers in 1760. . . . . No new settlements had been formed, and I am satisfied that at the commencement of the Revolution, exclusive of officers and soldiers and their families, the entire white population of the Northwest did not exceed 5000 souls." Mich. Coll., Vol. III, p. 15.

ance with the provisions of the Ordinance of 1787, the importance of which can scarcely be exaggerated. It secured freedom, education and political development to what are now five great States—Ohio, Indiana, Illinois, Wisconsin and Michigan. We cannot trace the growth of these individual States. It will answer our purpose to sketch as briefly as possible the growth of local powers in that one of the five which first adopted the town-meeting, and by its success induced many other States, west and south, to make the same attempt with as marked success.

Counties were established in Michigan by Gov. Hull, in 1805, and for the same object as the counties of old Virginia—for judicial purposes. Indeed, one-fourth of the laws of Michigan at that time were taken from Virginia and the rest from Ohio, Massachusetts and New York, in about equal proportions.[1] As the Ohio legislation was in part a copy of Virginia and Pennsylvania laws, the influence of the two different systems of local government, centralized and decentralized, was about equal. The French preferred central control, but most of the new settlers were from New York and New England, where local power was most developed. In 1815,[2] before a sign of local government was visible in the rural districts, an act reincorporating Detroit allowed the electors in town-meeting to levy taxes for such purposes as they saw fit. The same power was granted to Prairie du Chien in 1821.

The growth of local power outside of the cities was somewhat as follows: Gov. Hull, before 1813, appointed commissioners to supervise the highways and bridges in the as yet unincorporated townships or divisions of territory six miles square, into which all Western land is divided by the government surveyor. Then these commissioners, in 1820, were given the relief of the poor. Soon after, in the same year, by vote of the governor and judges, it became the duty as well as privilege of the governor to appoint three county commissioners, with somewhat enlarged powers.

In 1825, Congress gave power to the governor and council of Michigan to incorporate townships and provide for the election of county and township officers. This may be considered as the foundation of local government in Michigan, establishing, as it did, local elections for all local officers; but the powers of the county

[1] This statement is based on an analysis of the Territorial Laws, published in one volume.

[2] See Territorial Laws. Acts of 1815.

still vastly exceeded those of the town. From a law of 1827 we judge that the town-meeting could only appropriate money for the destruction of noxious weeds, birds and animals, and for the maintenance of the township poor. Another and important power was, however, conferred upon the township that year; namely, raising money for schools. From that time until the present, the powers of the township have slowly but continuously increased.

The genesis of local government in Western hamlets is very simple. First comes the settler, who, axe in hand, clears the ground for his humble dwelling and plants whatever seed he has brought with him. Then comes another settler and another, until, perhaps, a dozen families are established near. Two wants are now felt: roads, or at least paths, from house to house, from hamlet to market town, and a school-house for the multiplying children. There is no strong central authority to provide these things, but the settlers meet and voluntarily vote to tax themselves. The services of a supervisor, collector, clerk, constable, and justice of the peace are required. Many a township record begins like that of Burlington.[1] "Was organized in 1837, and held its first township meeting, April 3d, of that year, electing Justus Goodwin, supervisor; O. C. Freeman, town clerk; Justus Goodwin, Gibesia Sanders and Moses S. Gleason, justices of the peace; Levi Haughtailing, constable and collector. Established six road districts; voted, $100 to build a bridge across the St. Joseph river, and $50 for bridging the Nottawa creek. Voted, $50 for common schools and $5 bounty for wolf scalps." The township would naturally assume other powers in due time with the increased community of interests.

The local institutions of the East were transplanted to a new soil, losing in the journey none of their pristine vigor, but casting off such portions as were found unsuited to a change of circumstance and time. Of the four supreme court judges of Michigan, three are of New York or New England birth. The same is true of fifteen of the twenty-four State circuit judges. Five of the latter are of Michigan birth, and three of Ohio.[2] Probably no State can rival Michigan in number of sons from New York and New England. Of the 496 members of the Michigan Pioneer Associa-

[1] Records of Burlington, Calhoun Co. Mich. Coll., Vol. II, p. 211.
[2] Michigan Manual for 1881, pp. 413–423.

tion in 1881, 407 are from these sections.[1] From such a fact alone we might expect an aptitude for local government; but apart from this, the kindred fact of participating in the organization of communities and new governments has had much to do with the easy transplanting of local institutions, and with the energy and force of character displayed by the settlers. "There is something so staid, so stereotyped, so entirely finished in those old settlements" [of the East], remarks a recent speaker,[2] "that there is small opportunity for development; but let the persons that are there struggling for an existence amid those old fossilized, stereotyped institutions, start out into a new country, and they can get into a position in the organization of society, the organization of States, the organization of counties, the organization of towns, the organization of villages, the establishment of schools and churches; and thus it is by being brought into contact with this necessity the opportunity is afforded to develop into a higher type, and a greater vigor of life, than is possible in the old country."

A marked feature of the political development of Michigan is the influence of the governors and judges of the territory. Their legislation, in the words of Judge Campbell, was "rather a first preparation for popular government than the result of popular discontent." From 1813 to 1831, Governor Cass was a great power in the territory. He was thoroughly imbued with New England ideas of local government, under which he was born and brought up. He it was, more than any one else, who instituted county and town government in Michigan. He gradually abandoned the appointment of county and township officers, and urged, nay, required the people to elect them. He evinced his far-reaching discernment and foresight in the following words: "In proportion as government recedes from the people, they become liable to abuse. Whatever authority can be conveniently exercised in primary assemblies, may be deposited there with safety. They furnish practical schools for the consideration of political subjects, and no one can revert to the history of our revolutionary struggle without being sensible that to their operation we are indebted for much of the energy, unanimity and intelligence which was displayed by our

[1] Michigan Pioneer Collection, Vol. I, p. 92; Vol. II, p. 186; Vol. III, p. 268.

[2] See Michigan Pioneer Collection, Vol. II, p. 398.

government and people at that important crisis."[1] And in this he voices the sentiments of Jefferson, who says: "These wards, called townships in New England, are the vital principle of their governments, and have proved themselves the wisest invention ever devised by the wit of man for the perfect exercise of self-government and for its preservation."[2]

In the constitution which Michigan adopted on becoming a State, in 1837, the governor had important powers. With the consent of the senate, he could appoint the judges and all State officers; could adjourn the legislature if he thought fit, and could remove from office not only State officers, but even those of the county and township if he thought them incompetent. Internal improvements also were sanctioned. All this is now changed. By the constitution of 1850 the power of the governor was greatly restricted. Nearly all officers, ministerial as well as county and town, were made elective; while mismanagement of the finances in making internal improvements had so displeased the people that the power was taken away. Exclusive control was given to the county board of supervisors in the settlement of claims against counties,[3] and the express provision was inserted that the legislature might confer upon politically organized or incorporated townships, incorporated villages and cities, and upon the boards of supervisors of the several counties, "such powers of a local legislative and administrative character as they may deem proper."[4] The county seat cannot be removed without vote of the electors, and when, in 1870, the constitutional amendment was submitted to popular vote, allowing county supervisors to raise $2,000 for public buildings, highways, bridges, etc., without vote of the county, instead of $1,000 as at present, the amendment was defeated, 61,904 to 39,180.

[1] Life of Cass, by W. G. L. Smith, p. 181.

He also says: "Those institutions have elsewhere produced the most beneficial effects upon the character of communities, and upon the general course of public measures. They embrace within their scope those questions of local police which are necessary to every citizen, and which every citizen is competent to discuss and determine. In the more extensive concerns of a country the necessary regulations for these subordinate matters cannot be adopted and enforced" [by the central authorities].

[2] Letter of Jefferson to Samuel Kerchival, July 12, 1816. Writings, Vol. VII, p. 13.

[3] Constitution of 1850, Art. X, Sec. 10.

[4] Article IV, Sec. 38.

Michigan was the first State in the West to adopt the town-meeting. She has been followed in this by Wisconsin, Minnesota and Illinois. The three States, Ohio, Indiana and Illinois, were settled more largely by people from Pennsylvania, Kentucky and Virginia, than were Michigan and Wisconsin. As a natural consequence, they have adopted a compromise system similar in many respects to that of Pennsylvania. Ohio[1] and Indiana[2] have township officers elected by the people, but few questions of an administrative or legislative character are submitted to the voters. In Illinois,[3] however, in 1848, a law was passed[4] by which a vote of a majority of the legal voters allows a county to adopt township organization with power lodged in the town-meeting, as in Michigan and Wisconsin. Seventy-five of the one hundred and two counties have already so voted—seven since 1870—and there is no doubt but that the others will follow.

The town-meeting in Michigan[5] is thus conducted:—The first Monday in April of each year, every citizen of the United States, twenty-one years of age and upwards, who has resided in the State six months and in the township the ten days preceding, has the right of attending and participating in the meeting. The supervisor, the chief executive officer of the township, presides, and, with the justice of the peace whose term of office soonest expires, and the township clerk, constitute the inspectors of election. After the choice of officers for the ensuing year, the electors proceed, from twelve to one or three, as the case may require, to the discussion of town business. Complaint is perhaps made that the cattle in a certain part of the township are doing damage by running at large; a by-law is passed, forbidding the same under penalty not exceeding ten dollars. A bridge may be wanted in another part of the township, but the inhabitants of that road district cannot bear the expense; the town-meeting votes the necessary amount, not exceeding the limits of law, for the laws restricting the amount of taxation and indebtedness are very particular in their provisions. The electors may regulate the keeping and sale of gunpowder, the licensing of dogs, and the maintenance

[1] Revised Statutes of Ohio, 1880, Part I, Titles X and XI.
[2] " " of Indiana, 1881, Chap. 90, Article 32.
[3] " " of Illinois, 1880, Chap. 139.
[4] For law as amended, see Illinois; L, 1861, pp. 216–218.
[5] Howell's Annotated Statutes of Mich., 1882, §669–717.

of hospitals, and may order the vaccination of all inhabitants. The voters in town-meeting are also to decide how much of the one-mill tax on every dollar of the valuation shall be applied to the purchase of books for the township library, the residue going to schools. The annual reports of the various township officers charged with the disbursement of public moneys also report at this time. In short, whatever is local in character and affecting the township only, is subject to the control of the people assembled in town-meeting.[1] Yet we may notice some minor differences between the New England town-meeting and its sister in Michigan. In the latter, the by-laws and regulations are less varied in character. This is due to the fact that in the West that part of the township where the inhabitants are most numerous, the village, and for whose regulation many laws are necessary, is set off as an incorporated village, just as in nearly all the Central and Western States. These villages have the privilege, either directly in village-meeting, or more often through a council of five or more trustees, of managing their own local affairs, their police, fire department, streets and water-works.[2] In some States, however, they are considered parts of the township, and as such vote in town-meeting on all questions touching township roads, bridges, the poor and schools.

[1] The voters may order the raising of any sum within certain limits which they may consider necessary or proper for the ordinary expenses of township government or for special local purposes. [See Upton v. Kennedy, 36 Michigan, 220.]

The extreme local self-government of Michigan is nowhere more strongly defined than in a decision of Judge Cooley and associates on the supreme bench, in Robbins v. Barron, 33 Mich. 126: "The board of supervisors [of the county] do not originate township or school taxes, but they take the certificate of the township clerk of the several amounts which the proper authorities have voted for those purposes and direct the amounts specified, if they appear to be authorized by law, to be spread upon the tax-roll of the townships. The supervisors have no discretion in the premises; they have only to see that the sums are authorized by law and then their duty to give the proper direction is imperative. If they should wrongfully refuse to give it, they might be compelled by *mandamus* to do so. But we also think that if the township authorities should proceed to levy the taxes which had been lawfully voted, their action would be perfectly valid, whether the proper direction had been given by the supervisors or not. . . . The action of the supervisors is not, we apprehend, required to give the local officers power in the premises, but rather to insure the duty being surely and regularly performed."

[2] Towns may now, in Massachusetts, authorize districts to maintain street

Similar powers are lodged in the town-meeting in Wisconsin,[3] Minnesota[4] and Illinois.[5] Minnesota, as a territory, had the county system, there being no incorporated townships. On becoming a State in 1858, the Illinois system was adopted bodily, and changed again at the end of two years for the county system; but soon the New England settlers compelled a return to the township system. In some important respects the New York town meeting[6] has less power than further west, as witness the provision allowing the town highway commissioner to expend $250 a year without vote of the town.[7] The electors as a body are not usually called upon in New York to determine directly, at the polls, questions of local management and expenditure, and even when so consulted their vote is more frequently considered advisory than binding, for local government in New York finds its greatest development in the county board.

Any study of town government would be incomplete without an examination of the powers and duties of town officers. "The capacity for self-government," says Von Holst,[8] "shows itself to a very essential degree in the moderate self-limitation by the people of their direct political activity and a correct perception of the things which they can better accomplish by their delegates." In the early days of the New England town the number of officers was proportioned to the variety of duties required of them. De Tocqueville, fifty years ago, mentions nearly twenty town officers as the usual number. But the tendency now is toward consolidation.

In Massachusetts[9] the three selectmen are usually assessors, overseers of the poor, of public health and roads, besides carrying out the orders of the town-meeting and managing most of the

lamps, libraries, sidewalks, police, and a fire department. [See Public Statutes of Mass., 1882, Chap. 27, Sec. 37.]

[3] Rev. Stat. Wis., 1878, Chap. XXXVIII.

[4] Rev. Stat. Minn., 1878, Chap. X, Secs. 1-35.

[5] Rev. Stat. Ill., 1880, Chap. 139, Secs. 1-83.

[6] Rev. Stat. N. Y., 7 ed., Chap. XI, Title II, Article 1, and Title VI. L, 1847, Chap. 197. L, 1872, Chap. 513. L, 1873, Chap. 46.

[7] Rev. Stat., 7 ed., Chap. XVI, Title I, Article I, Sec. 4; L, 1832, Chap. 274, and L, 1857, Chap. 615.

[8] Constitutional History of the United States. Vol. III, p. 155.

[9] Pub. Stat. of Mass., 1882, Chap. 27, Sec. 101; Chap. 52, Secs. 3, 4; Chap. 80, Sec. 3; Chap. 102, Sec. 90, etc.

town business. Michigan, following the example of New York, has but one important local officer, a supervisor,[1] whose duties are rather executive and clerical than administrative. As assessor he takes the valuation and submits it to the county board for revision. Receiving again the valuation as corrected, and from the township clerk a statement of the amount to be raised, he apportions the tax among the inhabitants, and delivers the list to the treasurer for collection. He is required to take the State census every ten years, to report violations of the liquor law, to inspect dams and see to the maintenance of shutes for fish. He provides temporary relief for the poor of the township, and represents his township in the transaction of all legal business. Michigan townships have but one supervisor, yet there is always a township board,[2] composed of the supervisor, township clerk, and those two of the four justices of the peace whose terms of office soonest expire. This board exercise many of the powers of the Massachusetts selectmen. They may remove school district officers for illegal use of money; they are the court of appeal for all dissatisfied with the decisions of the highway commissioner; they yearly examine and audit the accounts of the township treasurer, and of all others charged with the disbursement of the public money; they determine the bond of the clerk, preserve town records, call special town-meetings, fill vacancies in town officers, may raise money for necessary purposes when the town has neglected to do so, and exercise other powers of a similar nature, while as a board of health they possess other important powers. Wisconsin[3] has three supervisors who correspond to the New England selectmen. The assessor is a separate officer elected by the people. Minnesota is still more like Massachusetts, for the three supervisors have charge of the roads and bridges also, and review the assessment list. In Ohio there are three township trustees who have the entire charge of local affairs, being, with the clerk and treasurer, the only township officers. In Indiana, with but one township trustee

[1] See Green. Township Laws of Michigan, 1879.

[2] Ibid.; and Howell's Annotated Stat., Secs. 744–750.

Under the Revised Statutes of 1838, p. 64, Sec. 40, the township board was authorized to raise money, independently of any vote of the electors, to pay claims audited. This power was not mentioned in the Revised Statutes of 1846, and in 1849, March 31, Art. 200, the board was prohibited from voting any sum for any purpose other than ordinary township expenses.

[3] Rev. Stat. Wis., 1878, Secs. 819–827, and Chap. 52, etc.

and no township board, more power must be given to the county, and no taxes are there levied without the advice and consent of the county commissioners. The same is true of New York. The town supervisor is largely controlled by the county board. The duties of the other township officers—the clerk, treasurer, highway commissioner, constables, and justices of the peace—are sufficiently indicated by their titles.

Inasmuch as many of the thousand or more townships of a State lack the political education and conservatism necessary for perfect self-control; since also many, through lack of means, cannot raise sufficient money for roads, bridges, schools and the poor, a higher authority is needed, with the power of equalizing the valuation of several contiguous towns, of taxing the whole number for the benefit of the poorer, and of exercising a general oversight over township expenses. This power resides in all States, to a more or less degree, in a county board. In New York, where no tax can be raised save for schools or a town hall, and no bridge rebuilt, in town or village, without the approval of the county, it may be well to have the board composed, as there, of the supervisors of every town in the county; but where the powers of the county are not as great, *e. g.* in New England and much of the West, three commissioners elected by the whole county or its districts are better. In Michigan, for instance, which has borrowed the organization of the county board from New York, and its powers from Massachusetts, the board is too large. Judge Cooley, in a recent letter, sharply criticises it. There is so little responsibility in a board of 16 to 24 members that there is a likelihood of illegal and unwarranted action. Matters of local concern are controlled by combinations in the board. Illinois has the Michigan system. Wisconsin has a board composed of men chosen from two or more towns. Minnesota has three county commissioners with little power. Further west the county renders valuable aid in raising money for schools, for the tax from the richer towns aids the schools of the poorer.

The importance of this power is not fully appreciated. For lack of similar provision in Massachusetts, there is scarcely any State or county aid or control of schools. Every town is left to its own resources, with poor results. All educators earnestly advocate county and State control of schools, that there may be uniformity of methods, and that the country districts, the nurseries

of our great men in the past, may not degenerate. But two influences oppose: the fear of centralization on the part of the small towns which need it most, and the dislike of the rich cities to tax themselves for the country districts.

We have reserved until now the consideration of the relations of local government to public education. A government like ours, resting on public opinion, must educate the voters. Convinced of this, the intelligent and far-sighted statesmen of the last century passed the ordinance of May 20, 1785, which gave one section of land a mile square in every township in new States and territories for school purposes, to be kept as an inalienable fund. In accordance with this ordinance and that of 1848, introduced by Senator Douglas, which gives two sections instead of one, there have been given to nineteen States and eight territories for school education, over 106,000 square miles, or nearly as much as all New England and New York.[1] A wiser provision was never made by government, but its value is not confined, as is usually supposed, to its direct effects on public school education. "Local self-government," says a recent English writer, Bishop Frazer, "is the mainspring of the American school system."

As the immigrants surged westward, from Ireland and from Germany, from the Connecticut and the Susquehanna, they found a vast educational fund awaiting them, but to secure its benefits local organization of school districts and local taxation were necessary. The public fund alone was not sufficient, but it acted as a great stimulus. Now, what has been the result? Dakota has already 400 school districts where the voters meet at annual and special meeting to discuss and vote local taxes for everything relating to school purposes. In short, the district meeting is modelled after the town-meeting, for which it is the fitting school.

In Michigan, the voters in district meeting direct the purchase of a site and the building of a school-house, the amount of the tax, however, being strictly limited by law.[2] They also may vote

[1] 46th Congress, 3d session, House of Rep. Ex. Doc. 47, Part 4, pp. 223–231, or Report of U. S. Com. of Education, 1880, pp. xxvii, xxxiv.

[2] Act No. 164, L. L. of 1881 (§27), Chap. II, Sec. 20. The voters have power "Sixth, to vote such tax as the meeting shall deem sufficient, to purchase or lease a site or sites, or to build, hire or purchase a school-house or houses; but the amount of taxes to be raised in any district for the purpose of purchasing or building a school-house or houses in the same year that any bonded indebtedness is incurred, shall not exceed in districts containing less

to repair the school-house, to provide the necessary school apparatus, direct the sale of school property and the management of suits at law. They also determine the length of school terms, while the district board of three elected officers estimate and vote the tax for the entire support of schools over and above what is voted by the electors.[3]

When, however, we speak of the school district meeting as a preparation for the town-meeting, we are not ignorant of the many injurious effects attending the district system in the older States. It caused, and continues to do so in some States, such subdivision of school moneys, and such local strife, as to injure greatly the efficiency of the schools.

In some States, notably Massachusetts, the town system has been substituted with good results. Under this latter system, all the money for the school districts of a town is voted in one sum at the town-meeting, and afterwards applied at the discretion of the public school committee.[4] But where township government does not exist, and the people are too scattered to have similar interests, the school district system is the only one practicable, and its effect in promoting local government is manifest.

In 1880, some 35,000 of the 100,000 people in Southern Dakota were from Michigan, Wisconsin, Minnesota, Illinois, and other States which have complete local government, and the town-meeting has already been introduced by popular vote in the more thickly settled counties.[5]

than ten children between the ages of five and twenty years, $250; in districts having between ten and thirty children of like age, it shall not exceed $500; and in districts having between thirty and fifty children of like age, it shall not exceed $1,000."

[3] Districts with eight hundred children between five and twenty, must maintain a school nine months in the year, and not less than five months where there are from thirty to five hundred children, and at least three months for smaller neighborhoods, on pain of forfeiture of their share of the one-mill tax and primary school interest fund. But if this is not provided for at the annual district meeting, the district board must make provision for it.

[4] Pub. Stat. Mass., 1882, Chap. 44, Secs. 28, 46–48.

[5] R. F. Pettigrew, Congressional delegate from Dakota, writes as follows: "Dakota Territory, at least that portion south of the 46th parallel, has been settled very largely by people from Wisconsin, Michigan, Iowa, Minnesota, Illinois and Indiana. In 1880 there were 100,000 people in Southern Dakota; 10,000 of whom were born in Wisconsin, 6,000 in Minnesota, 5,000 in Iowa, 4,000 in Illinois, and 4,000 in Michigan, over 2,000 in New York, and many

Montana, equal in size to Dakota, has too small a population as yet (only 40,000) for township organization; but here, too, over an area three times as large as Pennsylvania, we find school districts, 105 in number, with local powers.[6]

The same may be said of Idaho,[7] Washington Territory,[8] Oregon,[9] Wyoming, Colorado, Nevada, California, Kansas and Nebraska.[10] In some, as, *e. g.*, in Idaho and Washington Territory, the people do not have the entire management of their schools in school district meeting, for the county commissioners, usually three in number, assess a tax of from one to eight mills on a dollar in addition to funds arising from the sale of public lands, but the voters are called upon to elect district trustees, to vote yes or no on the question of some specified sum which these trustees may propose as a local tax, and also to decide in district meeting all questions relating to building, repairing or removing a schoolhouse.

The township six miles square is impossible in Colorado, where the people live in the mountains and valleys, along the banks of streams, or in long narrow belts on the plains, where the land can be irrigated. Nevada has begun township organization, although

were born in the New England States. The township organization is adopted as each county becomes sufficiently settled to maintain it. It is adopted by the whole county by the votes of the people. Only the older counties now have the township organizations. The other counties are adopting this system as fast as they obtain sufficient wealth and population. There is no question but what within a very short time every county in Dakota will possess the township system similar to New England. This system will spread into all the territories of the Northwest. It is the bulwark and foundation of free institutions, and is the school in which men are taught the science of self-government more than any other."

See also Rev. Stat., 1877, Chap. 23.

[6] Report for 1878–9 of Hon. W. Egbert Smith, Ter. Supt. of Public Instruction, of Montana.

[7] In 1880, 149 school districts, an increase of 55 in one year. Report of Ter. Supt. of Education, 1879–80, p. 30.

[8] In 1881, 536 school districts. While in 1879, 375 reported. Rep. Ter. Supt., 1881, pp. 9, 10.

[9] A population of less than six to the square mile renders township organization impossible. Nearly all of the 26 counties have each an area equal to Delaware and Rhode Island united, but here also we find provision for voting of local taxes in the 1007 school districts.

[10] Consult the School Laws and Educational Reports of the Territorial and State Supts., or the summary given in the Report of the U. S. Commissioner of Education for 1879 and for 1880.

most of the power resides in the county commissioners. Township organization similar to that of Indiana has just been provided for in the constitution of California. Kansas has 999 townships similar to those of Indiana, with township officers, but without the town-meeting. Provision was made for township organization in Nebraska in the constitution of 1877, and two acts in accordance with it have since been passed, but failed to become law, the first act being declared unconstitutional, and the second, in 1881, being vetoed by the governor because of its many defects. But another attempt will soon be made. In Ohio, and Indiana, and Iowa, the voters are required to approve the expenditure of money for school buildings and a few other purposes, though nearly all other local expenditures are left to the discretion of the township and county officers. Missouri adopted optional township organization in 1879, and already thirteen of the 114 counties have voted it. As might be expected, the great trouble[1] has been in securing the large number of competent officers requisite for township administration. Such a change as that from county to township government cannot be made in one year or five years. It is only of the tendency we are speaking. In Missouri much power is lodged in the voters in district meeting, but, as elsewhere, subject to strict limitations in the amount which they can raise. Thus we have found that the increase of local powers has been unprecedented during the last decade, and seems destined to continue until all the great West and Northwest have experienced its benefits. The following table, compiled from the census of 1880, gives some of the more important facts concerning local self-government in those States where it is most complete:

	No. Townships.	No. Counties.	Population.
Maine,	455	16	648,936
New Hampshire,	230	10	346,991
Vermont,	239	14	332,286
Massachusetts,	326	14	1,783,085
Connecticut,	166	8	622,700
Rhode Island,	34	5	275,531
All New England,	1,450	67	4,009,529
New York,	937	60	5,082,871
New Jersey,	236	21	1,131,116
Illinois,	1,008	75	2,649,841[2]
Michigan,	1,054	77	1,636,937
Wisconsin,	891	62	1,314,497
Minnesota,	1,100	72	780,773
	6,676	434	16,605,564

[1] Letter from State Supt. Public Instruction, July 23d, 1882.

[2] Only three-fourths of the State have as yet adopted township organization.

While emphasizing the important bearings of school district organization upon the development of local government in the new Northwest, we cannot forbear a brief reference to a similar and noteworthy movement in an older section of our Union.

Now that the large plantations of the South are being divided and manifold industries are taking their place, the mechanic and the artisan appear at the cross-roads and form the nucleus of a village, instead of finding employment on the lands of wealthy planters; and with the village hamlet comes the first beginning of local self-government. A few towns in South Carolina have recently incorporated themselves for local taxation for school purposes, and the movement is spreading.[1] Thanks to the increasing agitation of prominent Southern educators, the people already have this right of local taxation for school purposes in Kentucky, Tennessee,[2] Virginia[3] and West Virginia,[4] while in Alabama,[5] by recent enactment, the school officers are required to call meetings of the patrons of the schools and consult with them concerning school matters. These movements toward local government are very recent, and will doubtless increase if the national government, in giving money to public education, as is proposed, shall couple it with the condition that an equal amount shall be raised by local taxation. Some of the Northwestern States have long done this, withholding aid from districts which failed to maintain schools for a certain number of months in the year. We are again reminded of the words of Jefferson[6] when writing of this very subject—local incorporation for schools—he remarks: "Where every man is a sharer in the direction of his ward-republic [*e. g.* school district or township] or of some of the higher ones, and feels that he is a participator in the government of affairs, not merely at an election one day in the year, but every day; when there shall not be a man in the State who will not be a member of some one of its councils, great or small, he will let the heart be torn out of his body sooner than [allow] his power [to] be wrested

[1] Report State Supt. of S. C., 1881, pp. 11, 15, advocates it strongly.

[2] In cities and incorporate towns, by act of legislature in 1881. See Report State Supt. Tennessee, 1881, p. 6.

[3] See School Laws, and Report of U. S. Com. of Education, 1881.

[4] Idem.

[5] School Laws, ed. of 1881, pp. 15, 16.

[6] Letter to Joseph C. Cabell, Esq., Feb. 2d, 1816. Writings, vol. VI, p. 544.

from him by a Cæsar or a Bonaparte. How powerfully did we feel the energy of this organization in the case of the embargo. I felt the foundations of the government shaken under my feet by the New England townships. There was not an individual in their States whose body was not thrown with all its momentum into action; and although the whole of the other States were known to be in favor of the measure, yet the organization of this little selfish minority enabled it to overrule the Union. What would the unwieldy counties of the Middle, the South and the West do? Call a county meeting, and the drunken loungers at and about the court houses would have collected, the distances being too great for the good people and the industrious generally to attend. The character of those who really met would have been the measure of the weight they would have had in the scale of public opinion. As Cato, then, concluded every speech with the words, '*Carthago delenda est*,' so do I every opinion with the injunction, 'divide the counties into wards.' Begin them only for a single purpose; they will soon show for what others they are the best instruments."

The wish of Jefferson seems destined to be fulfilled. As the New England town was built up about the church, so the Western and Southern town is centering its political activity about the school. It is also noteworthy that it is in the local government of the school district that woman suffrage is being tried. Says United States Commissioner of Education John Eaton, in his last report[1]: "Women's opportunities to influence education as voters and school officers have been greatly enlarged [during 1880–1881]. They may vote at school meetings in Kansas, Nebraska, New Hampshire, Vermont, Dakota and Wyoming; at school elections in Colorado and Minnesota; and for members of school committees in Massachusetts. They can vote at school meetings in Michigan and New York if they are taxpayers; in Washington Territory if they are liable to taxation. Widows and unmarried women in Idaho may vote as to special district taxes if they hold taxable property. In Oregon, widows having children and taxable property may vote at school meetings. In Indiana, 'women not married nor minors, who pay taxes and are listed as parents, guardians, or heads of families, may vote at school meetings.' In Kentucky, any white widow having a child of school age is a qualified school voter; if she has no child, but is a taxpayer, she

[1] Report of U. S. Com. Ed., 1880, p. xxv.

may vote on the question of taxes. Women are eligible to school offices generally in Illinois, Iowa, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Pennsylvania, Vermont and Wyoming; to school district offices in Colorado; to any office except State Superintendent in Wisconsin. They may serve on school committees in New Hampshire and Rhode Island, as school trustees in New Jersey, and as school visitors in Connecticut. Some offices are open to them in Maine, and all offices in California, unless specially forbidden by the constitution. In Utah, no discrimination on the ground of sex is made as to voting in general."

If society be an organism wherein the good of each member is the good of the whole, then the importance of local self-government is established. For does not this system of self-government bring to the masses that self-respect and feeling of equality before the law which is a prime condition of progress? Does it not also compel, for the sake of self-protection on the part of the more cultured, such attention to public education as will give the humblest citizen the means of determining what is for his true interest and for that of society? History gives but one answer. We note a growing tendency to give the general government more control over vast public interests, such as railroads and telegraphs; and with the improvement of the civil service this form of centralization will be rapidly developed. We also note a corresponding increase of local power over matter of purely local interest. Centralization of national interests, in so far as we can properly speak of centralization under a republican government, and decentralization of local interests, are principles not contradictory, but harmonious, and they are coming into prominence with every decade of our history. Methods may change, but progress is still the watchword, and the nation still lives in the strength and devotion of citizens whose powers have been developed, whose self-respect has been aroused under the American principle of local self-government.

VI

PARISH INSTITUTIONS OF MARYLAND

"The Parish, as we see it in Western Christendom, owes its origin to several causes, and is the final result of several earlier forms. The *παροικία* of early days was neither a parish nor a diocese, but the community of Christians living within a city or a district, regarded in relation to the non-Christian population which surrounded it. Every such community seems to have had a complete organization, and there is no trace of the dependence of any one community upon any other."—*Hatch, Organization of the Early Christian Churches* (*Bampton Lectures*, 1880.)

"The limits of parishes were probably, in almost all cases, fixed by the previously existing organization. Where the Roman organization prevailed, the Parish was the *pagus*, *vicus*, or *castellum*, with its surrounding *territorium*. Where, as in England, the Roman organization had been almost completely swept away, the Parish was identical with the township or the manor. . . . Between Parishes, as between townships, were frequently tracts of more or less unsettled or common land, on which chapels might be erected without trenching on any parochial right."—*Hatch, "Parish" in Smith's Dictionary of Christian Antiquities.*

"As the kingdom and shire were the natural sphere of the bishop, so was the township of the single priest; and the parish was but the township or cluster of townships to which that priest ministered. . . . The parish and the township, have existed for more than a thousand years side by side, identical in area and administered by the same persons, and yet separate in character and machinery. . . . The parish, then, is the ancient *vicus* or tun-scipe regarded ecclesiastically." —*Stubbs, Constitutional History of England.*

"The earliest records which we have of the proceedings of Parliament, find *Parishes* treated as the known and established integral subdivisions of the *hundred*. . . . It is decisive of the point as to the identity of the *Parish*, as an Institution, with the *Tything* of freemen and their tythingman, that the existence of a separate constable is an unquestionable criterion of the separate recognition of a Parish." —*Toulmin Smith, The Parish.*

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History is past Politics and Politics present History.—*Freeman*

VI

PARISH INSTITUTIONS
OF
MARYLAND

With Illustrations from Parish Records

By EDWARD INGLE, A. B.

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PARISH INSTITUTIONS
OF
MARYLAND.*

Before the last years of the seventeenth century but few Church of England ministers had been attracted to the colony planted by Lord Baltimore on the shores of the Chesapeake. Those who had ventured to take up an abode there were supported mainly by voluntary contributions, with now and then a legacy, or by the produce of their farms. Frequent complaints were made to England of the low state of morality and religion in the Province. Movements were started with a view of checking these evils, and the result was the passing in 1692 of an "Act for the Service of Almighty God and the Establishment of the Protestant Religion" in Maryland.† Agreeably to such provisions the justices and freeholders of

* In the library left by the late Bishop Whittingham to the Diocese of Maryland, there is a rare collection of materials illustrating the social, civil and religious history of the Province and State of Maryland. Copies of manuscripts found in English libraries, original parish records, parish histories, a remarkable collection of Maryland laws and documents, the diaries, letters and sermons of early Maryland clergy—these, if properly handled, could be made fresh and interesting sources of knowledge upon many points of our history. From such materials in part has been drawn the following paper upon the Parish Institutions of Maryland. Bacon's "Laws" have been the basis; but inasmuch as one must not believe that measures succeeded, simply because enactments favoring them are to be found in the statute books, every point made in this sketch has been verified, it is believed, by concrete examples.

† Bacon, 1692, Chap. II.

each of the ten counties divided their respective counties into parishes, varying in size according to their number of taxables.* A fine of one hundred pounds of tobacco was imposed upon Sabbath-breakers, and was to be used for the benefit of the poor of the "Parish, City or borough" where the offence should be committed.

In the newly settled country, a meeting of all the inhabitants of a parish in Vestry was well nigh impossible. This probably was a reason for the adoption of the representative system of Select Vestries, a usage that had already sprung up

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* All males and all female slaves of the age of sixteen years and over were taxables, except the clergy of the Church of England, who had benefices in the Province, paupers, and disabled slaves. Bacon, 1715, Chap. XV, 5.

Within four years the counties had been divided into thirty-one parishes (Historical Collections of the American Colonial Church, Maryland, p. 13). At first the parishes were contained within the limits of the county; but later, as the number of counties and parishes increased, some parishes lay in parts of two and even three counties. The hundreds were not of necessity integral parts of the parish, although they were made the basis of the new division. It is probable that the hundreds had been laid out according to natural boundaries, *i. e.*, the rivers and their tributaries, and the parishes were subject to the same idea, as may be seen from such of their names as Herring Creek, Middle Neck, South River, &c. In the Records of Baltimore County Court, 1692, fol. 338, is the following: "We do think fit to order that one parish be in Spesutiæ hundred and another in Gunpowder river hundred." In the same, 1693, fol. 126: "We, the vestrymen for Patapsco hundred, met together at the house of Maj. John Thomas." The word "hundred" was used here not for "parish" but simply to designate the parish until a proper title had been given. Thus in the June Court, 1693, fol. 115, it is shown that "the vestrymen of this parish of Gunpowder hundred" had agreed to build a church on Elk Neck, Gunpowder river, and to call the parish Copley (later St. John's). As population became denser, the number of hundreds in the *county*, without regard to parish bounds, became greater, so that frequently one hundred was in two parishes. So much confusion resulted from this, that finally the County Courts were empowered to lay out anew the hundreds in such a manner that no hundred should lie in more than one parish. When a new parish was to be erected in an old one, the consent of the incumbent was obtained, and then a petition was sent to the Assembly for an Act enabling the new parish to be made.

from other causes in England.* By Vestry was usually meant the house or room where parish meetings were held; but the term was frequently used to denote not only the place of meeting, but also the assembly itself, and the members taken collectively. The freeholders chose the Vestry, which was a corporate body for the holding and disposal of church property and the acceptance of bequests.† The Act of 1692 with some later ones had the effect of organizing Vestries, of building more churches, and of bringing a number of clergy into the colony, but there was still felt a need of further legislation in regard to ecclesiastical matters. Accordingly, in 1702, another Act became the law, by which the Church of England was more firmly established in the Province.‡

As an institution of Englishmen the parish system of Maryland was based upon the parish laws and customs of the mother-land, but there were various modifications to suit the new conditions. The materials for a reconstruction of this system are meagre, but the laws on the subject tell what had to be done, and various parish records show what really was done.

The Governor, for the Proprietor, inducted a Minister into a parish. He usually made appointments from nominees of the Bishop of London, and a Vestry was obliged to accept whomsoever the Governor sent. Occasionally he consulted the wishes of parishioners. In the record book of Prince George's parish is a copy of a letter from Gov. Sharpe to Mr. Alex.

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* For a condensed statement of the duties and capacities of English Vestries, consult "A Compilation containing the Constitution and Canons of the P. E. Church in the Diocese of Maryland, &c.," pp. 51–57. The subject is treated at length by Toulmin Smith in "The Parish," and by J. F. Archbold in "Shaw's Parish Law."

† The name Vestry is derived through the French from the Latin *vestiarium*, from *vestis*, a garment.

‡ Bacon, 1701–2, Chap. I. In 1700 an Act had been passed and sent to the King in Council. It was not approved in all its parts, but, having been omitted from the general repeal, was sent back with amendments to Maryland. This former Act amended was the Act of 1701–2.

Williamson, whom he had licensed "to act as curate" until another rector might be appointed, "which step," the letter states, "I conceive would be more agreeable to the Parishioners than if I were immediately to induct that gentlemen." The people thought they ought to have the privilege of choosing their own rector, as they were the ones who contributed towards building churches, and paid the salaries of incumbents. In 1768 one of the parishes refused to receive ministers presented by Lord Baltimore through his Governor, and upon an appeal to English Courts, a decision was given in favor of the parish.* But as a rule Vestries accepted the Governor's appointee, and, when they had done this, they could not rid themselves of him unless he chose to resign. There are, however, accounts of unpopular ministers having been mobbed and locked out of church. In one parish, after the death of the incumbent, the long dissatisfied parishioners requested the Governor not to induct another rector so disagreeable to them.

For the support of the clergy, forty pounds of tobacco were levied each year upon every taxable. The Constable of the hundred made a list of the names of all taxables and gave it to the Sheriff. He, after collecting the tobacco and deducting five per cent. as a fee, paid the remainder to the incumbents of the parishes in the county. As there was not an over abundance of prayer-books in use among congregations, every minister had to keep a clerk who acted for the congregation. One can almost see him in his desk below the pulpit, and

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* Coventry Parish, Somerset County. This parish had been contending for its rights for a long time. In 1749 the Vestry had indicted a newly presented rector for breaking into the parish church, the doors of which had been closed against him. The minister was acquitted only by the vote of the chief justice. One of the ministers appointed to the parish declared that he had been threatened with a ducking in a mill pond, and that armed resistance had been made against him. A full history of the troubles is given in Dr. E. Allen's manuscript "History of Coventry Parish."

hear him making the responses in sonorous tones, or lining out the hymns. It is, perhaps, a warm June morning, and while the elders are peacefully dozing, the youths cast longing glances through doors or windows towards their sleek steeds* fastened in a shady spot convenient to the "upping block," or they watch with interest the efforts of a Church Warden to drive some stray dog from the church. Those who are not overcome by the general drowsiness, join in the singing, or patiently hearken to the delivery of the usual prosy sermon, or to the reading of the penal laws of the Province.

Service over, the congregation breaks up into groups, some reading the notices posted at the church door, others discussing the latest bits of news, the prospects of a fine tobacco-crop, and others exchanging friendly greetings. At last the few stragglers disappear and the rector wends his way to the "glebe." In many parishes there were glebe-lands, which the incumbent either occupied or rented. Glebes were generally donated to the parish, but when there was no minister, and the church property needed no repairs, the parish funds could be expended in buying and stocking a glebe. The incumbent did not always insist upon everybody's paying the tax for his support. In 1742, the rector of the parish where Charles-town had been recently laid out, declared that all persons taking up their abode in the new town should be free from such a tax.† He must have been either a man of means, or settled in a wealthy parish. Many of the clergy were poorly compensated for the labor and trouble they were compelled to undergo.‡ The parishes were very large, and the

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* "They are all great horsemen and have so much value for the saddle, that rather than walk to church five miles, they will go eight to catch their horses and ride there, so that you would think the churches looked like the outside skirts of a country horsefair."—"Itinerant Observations in America," Lond. Mag. 1745–6. Reprinted in Coll. Georgia Hist. Soc.

† Bacon, 1742, Chap. XXIII, 18.

‡ Extracts from a letter written in 1711 by Alex. Adams to the Bishop of London, (Hist. Coll. Amer. Col. Ch. Md., p. 63): "For these four

parishioners lived scattered in every direction. The minister was, therefore, obliged to travel about on horseback in order faithfully to discharge his duties to his congregation. The clergy, however, enjoyed certain immunities and small emoluments. They were not taxed and were exempt from militia service. It was quite usual for them to receive a fee for delivering a sermon at the funeral of a wealthy parishioner. If a minister was in the parish, a lay magistrate, who dared perform the marriage ceremony was liable to a heavy fine of tobacco. Banns were published in the parish to which the prospective bride belonged, and her rector received the fee. If there was no incumbent, the Governor granted a license and then any minister could officiate at the wedding.

An Act was passed in 1704* to secure the parishes in the possession of their libraries, which the Rev. Dr. Bray had

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years I alone have served, as a Presbyter of the Church of England, the whole County of Somerset, consisting of four parishes, so that six Congregations are supplied by me, which obliges me to travel 200 miles per month, besides my pastoral charge in my own parish (Stepney), which has a church and chapel, and is near 30 miles in length, and some 16 or 18 miles in breadth, which possibly is a labour that few in America undergo: yet, my Lord, I can't subsist without some assistance, for Tobacco, our money, is worth nothing, and not a Shirt to be had for Tobacco this year in all our county: and poor ten shillings is all the money I have received by my Ministry and perquisites since October last."

"I humbly desire your Lordship to send me a Letter to be chaplain to some man-of-war that comes to convey the Virginia Fleet next year, and after I have got some money by being chaplain aboard to pay my Debts (which are not very considerable as yet), I assure your Lordship I am resolved to return to my Parish as soon as times amend, and I can comfortably subsist among them."

"Our Cloathing, household furniture, Malt, beer, sugar, spice, Coffee, Tea, and such Things generally come from England, and are sold by y^e^ merch^ts^ here at above one hundred ℔ cent. The expense of living here is generally valued doubl. w^t^ it is in England." (Ibid. p. 138). Many of the clergy were for a long time without surplices, and some were compelled to teach in order to gain a livelihood.

* Bacon, 1704, Chap. LVI. Papers of the Rev. Dr. Bray, Lond. 1699, p. 32. For a life of Dr. Bray, see Hawks, "P. E. Church, U. S.," Vol. II, pp. 83–114, and Todd's "Life and Designs of Dr. Bray," London, 1808.

suggested, and at considerable expense, had procured for "the Incouragement and Promoting of Religion and Learning in the Foreign Plantations, and to Induce such of the Clergy of this Kingdom as are Persons of Sobriety and Abilities to accept of a Mission into those Parts." Two-thirds of the books sent to America were bestowed upon the parishes in Maryland. The parish library belonged to the incumbent, who was held accountable for the books to the Governor and Council, and to the Vestry, and had to pay triple cost for any damages. When he removed, he had to deliver to the Vestry the library in as good a condition as possible. As the books were "for the sole Use of the Minister," they were mostly theological and classical works. But at least one collection, it seems, provided against temporal as well as spiritual foes. In it were contained, besides "Catechetical Lectures," "The Lawfulness of Common Prayer," and "The Whole Duty of Man," a book on "Martial Discipline," one on Articles of War, a perspective glass, a pocket compass, and a dark lantern.

The Vestries were required to inspect twice a year the parish libraries, but they must have neglected their duty in this respect, for few if any of the books are known to exist.*

Dr. Bray wrote in 1700 that the Governor of Maryland had caused an Act to be passed whereby free schools were to be established for the propagation of the Gospel, and the

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*The following extract from "Notes and Queries," Oct. 7, 1882, may in some degree explain their disappearance: "I can well remember in 1852 paying my first visit to Beverly and inspecting the noble perpendicular of St. Mary in that town. . . . . In one of the vestries in the north transept was a small library, consisting mainly of goodly folios, chiefly theological, covered with dust, in a most dilapidated condition, and I was then informed, the fires in the church had usually been lighted from this literary source for some time. Thirteen years afterward . . . a second visit was paid to the same church, then undergoing restoration. The pews had gone and also the small collection in the library had become 'fine by degrees, and beautifully less,' for it was apparently reduced to one book, a copy of the *Hexapla*. John Pickford, M. A."

education of the youth in the Province. These schools were to be for the "instruction of youth in Arithmetic, Navigation and all useful learning, but chiefly for the fitting such as are disposed to study divinity, to be further educated at his Majesty's College Royal in Virginia."* In an Act of 1723,† it is stated that youths were to be educated, so that they might the better serve Church and State. It is probable that for the purpose of looking after the interests of the Church, one minister was a member of the board of seven school visitors in his county. The minister may have occupied this position by reason of his attainments, for there were talented men among the Maryland clergy. One found enjoyment in compiling the laws of the Province, and superintending a manual labor school, another was clerk of the upper House of the Assembly, while not a few kept private schools. Such conscientious laborers were, however, comparatively rare. It was no unusual thing for ministers, who had been disgraced at home,‡ to be sent to America to reform. Reformation did not always take place. Many, removed from the restraints of ecclesiastical superiors, became careless in the performance of their duties, and some, indeed, acquired a bad reputation for scandalous living. Drunkenness was their chief failing, but more heinous crimes were committed by them. One, who had enjoyed his parish during thirty years, had become disabled by age. Refusing the assistance of neighboring clergymen, he authorized his clerk, a convicted felon, to read the

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* Md. MSS. in the Whittingham Library, p. 32.

† Bacon, 1723, Chap. XIX.

‡ In the Hist. Coll. Amer. Col. Ch. Md., pp. 128–129, is a list of the clergy in Maryland in 1722. This was evidently prepared by a Whig. The following are some of the descriptions: "A stickler for the present happy establishment," "A Whig & an excellent scholar & good liver," "An idiot and Tory," "A Grand Tory and a Rake," "A Whig & a good Christian," "A Whig of the first rank, and reputed a good liver, but a horrid preacher," "Tried for his life in Virginia for shooting a man. Reformed." The story of the notorious Bennett Allen is not worth repeating.

whole service, and generally neglected his other parochial work. The Vestry much aggrieved complained of his conduct, and also accused him of drinking, quarrelling, and fighting.* To check evils of this kind "Commissaries" were appointed, one for each "shore." These held visitations from time to time, and investigated complaints from parishes. As they were somewhat ignorant of their powers, they were hindered in their work, and accomplished little good either in correcting abuses, or in reconciling the people in general to the existing Establishment.† The Assembly passed several acts unfavorable to the clergy, and in 1771‡ an especially stringent one, by which every minister appointed to a parish was compelled to swear that he had no "simoniacal contract for his benefice." If he were absent from his parish one month at a time, or two months during the year, he was subject to a fine of ten shillings; if a Vestry or the Church Wardens should complain of a minister, the Grand Jury was to investigate the charges, and if these were sustained the offender was to be tried by a court consisting of three clergymen, three laymen, and the Governor, or if he was not a member of the Church of England, by the first person on the list of the Council, who was a Churchman. This last provision was most obnoxious to the clergy, who thought that a Court composed in part of laymen smacked of Presbyterianism, and should, therefore, be abolished.

But the greatest historical interest centres in the Vestry of which the Minister was "Principal." In every parish six *select* Vestrymen were chosen by the freeholders. Every Vestryman subscribed the test, took the special oath of his office, and the general oaths of allegiance, abjuration and asso-

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* Hist. Coll. Amer. Col. Ch. Md., pp. 130–131.

† The Commissaries were opposed on all sides. In one instance a minister who was preparing to sue the Commissary for damages, was only prevented from so doing by falling in a drunken fit into the fire and burning to death. See Sprague's Annals, pp. 36–37, Hawks, Vol. II, pp. 118–230, Hist. Coll. Amer. Col. Ch. Md., pp. 130–131, and elsewhere.

‡ Hanson, 1771, Chap. XXXI.

ciation,* which were administered at the first election by a Justice of the Peace, afterward by the "Principal." The legal time for elections was every Easter Monday, when the two Vestrymen who had served longest, were dismissed, and others appointed in their place. No one could serve as Vestryman more than one year in three. This law was strangely misconstrued by some, for, in one parish, some members of the Vestry were elected for a period of three years, and actually obeyed the decree of the parishioners, and that too in a town where the law should have been best understood, for County Court was held there. The only qualifications necessary for a Vestryman were, that he should be "sober and discreet" and not a member of the Romish Church. Keepers of ordinaries were excused from acting, and a certain Mr. Caswell was prevented from continuing in a Vestry by reason of his being coroner. Some Vestrymen were not even open professors of religion. They were generally men well known and of good report in the parish. For instance, the inhabitants of Piscataway Parish elected as *foreman* of the Vestry, Mr. John Addison, who was at the time a member of the Governor's Council and Chief Justice of Charles County. In the same Vestry were other prominent men. These were not chosen, it should be remembered, with a view of connecting their civil functions with those of Vestrymen, but because it was believed they would not abuse the confidence reposed in them. Occasionally accidents prevented the holding of elections at the proper time, in which case the old Vestry continued in office, and its acts were approved by the Assembly.†

Two Church Wardens were elected annually in the same manner as the Vestry, but were always reëligible.‡ Their

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* The oath of association was taken during William's reign; the oaths of allegiance and abjuration were used after the accession of George I.

† Bacon, 1760, Chap. VI.

‡ "William Bruce, Churchwarden Elect for Christ Church Parish in Calvert County, appeared, & alleged he was exempted from the Office of Churchwarden, being a practitioner of Physick, and was excused." (Hist. Coll. Amer. Col. Ch. Md., p. 95).

special duties were to take care of the church linen, "pewter or plate," and to provide bread and wine for the communion. Expenses incurred in procuring the elements were defrayed by parish funds. Sometimes the rector took charge of these matters. An entry in one parish record book states that the Rev. Edw. Butler had given up the "communion furniture." In another we read that the Rev. Alex. Williamson was paid "five pounds five shillings for finding wine for the parish use for over a year." In 1765 the Vestry of St. James' Parish ordered that "persons intruding into other persons' pews should be taken out by force and put in the stocks."* The Church Wardens probably executed this order, for they had to preserve "order in and around the church." When the "Commissary" held a visitation, the Wardens met him, and gave an account of the state of their parishes. At the only two visitations which, it is known, the Wardens attended, they were required upon oath to report at the next visitation the conduct and character of the incumbents, the condition of the parish property, and any infringements of the laws relating to Sabbath-breaking, and other immoralities. Vestrymen and Church Wardens who refused to serve without good excuse were fined one thousand pounds of tobacco.

The "Principal" summoned the Vestry meeting, but, that "nothing might be done unawares," the first Tuesday in each month was Vestry day. At "eleven of the clock, forenoon," the Vestry met, and three constituted a quorum. In some large parishes it was the custom, for convenience, to meet after service on Sundays. Usually there was a small Vestry-house, either adjoining or close by the church. Absent members could be fined. Some Vestrymen, for lack of something better to do, spent their time at meeting in fining their absent

* An Historical Sketch of Anne Arundel County. By Rev. Theo. C. Gambrall, 1876. Under the tobacco Act of 1728, the Church Wardens were ordered to summon a Vestry meeting to fill vacancies in the number of counters.

brethren. As a rule such fines were remitted at the next meeting.

After a long ride through the wilderness, the Vestrymen did full justice, no doubt, to the provisions for their refreshment. In one parish "a quart of rum and sugar equivalent" and "as much diet as would give the vestry a dinner" was prepared by the sexton, at the expense of the parish. As this custom caused after a time "great scandal," it was abolished, and each Vestryman was required to furnish his own dinner.

The proceedings of the Vestry were recorded in a book by the clerk or register, chosen and paid by the Vestrymen. The register kept also an account of all births, marriages and funerals in the parish. Any one failing to give notice of such occurrences in his family, was liable to be fined. Refusal to make an official entry in the register book was punishable by a fine. A small fee was given the clerk for searching a record, or for giving a certificate. Notices of Vestry meetings, or concerning other parish matters, were sent by the clerk, who also presented at court the pleas of the Vestry.

Vestrymen were the guardians of parish property and the censors of parish morals. If the church buildings needed repairs or additions, the Vestry contracted for improvements. If the Vestry had not sufficient means to pay parish charges, it petitioned the County Court to levy a tax. This tax could not exceed yearly ten pounds of tobacco per poll. As a parish became more thickly settled, or if the church was not convenient to all parishioners, the Vestry summoned them to decide whether a chapel of ease should be built, and if so, where. If a chapel was desired, a petition was sent to the Assembly for an Act authorizing the parish to erect one. Voluntary subscriptions or taxes imposed by the County Court paid for the building of churches and chapels. The sites selected for these edifices were generally near springs or wells, in order to save the trouble of carrying water. The land was, perhaps, given outright by some piously disposed parishioner, and if there was a doubt as to how much had been given, two acres

were surveyed and appropriated for the purpose.* Sometimes the Vestry bought the land. In the laying out of Maryland towns, places were left for a "church, chapel, market-house, or other public buildings." In Annapolis three lots were reserved, one for the use of the minister, one for the sexton and parish clerk, and the remaining one for the Vestry's clerk and the Commissary's clerk.

Before the churches were erected services were held in the court-houses or in private residences. Even when there was a parish church, such places were used for worship, in order to reach every parishioner. The churches were usually built of wood, but some were of bricks or stone. The church at Annapolis, as early as 1704, had a belfry and a bell, but most churches were plain structures devoid of such luxuries.† Besides, in a parish containing at least thirty square miles, a bell would have been of little use for calling together the congregation. The interiors were equally free from ornamentation. For some time many churches were without flooring save the bare earth, and they were not even plastered or glazed. As the parish prospered, floors were made of wood, bricks, or tiles. The pulpit was at one side and the chancel at one end. There were also a reading desk, or "pew," and "a place for the clark to sit in."

The pews were high backed, with seats around three sides, and sometimes had doors which were locked against intruders.

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* Bacon, 1704, Chap. XXXVIII, and 1722, Chap. IV.

† The Rev. Jonathan Boucher wrote in 1771 an epistle from the old church at Annapolis. It appeared in the Md. *Gazette*, and the following is an abstract:

"And often have I heard it said
That some good people are afraid
Lest I should tumble, on their head,
Of which, indeed, this seems a proof,
They seldom come beneath my roof.
* * * * * *
While I alone, not worth your care
Am left your sad neglect to bear;
Here in Annapolis, alone,
God has the meanest house in town."

The pews were either "built" by individuals, who had obtained the sanction of the Vestry, or bought from the Vestry at public auction or private sale. As they were very large, some of them seven feet by five, few could be built in the church, but, as the congregation grew, galleries were erected, and in them bench pews were placed. In 1774, an Act allowed the Vestry of St. Ann's Parish to build a new church.* By this Act, it was ordered that pews should be made to accommodate the Provincial officers and Assemblymen, strangers, the incumbent, Vestrymen, and Church Wardens. Those who subscribed most towards the building-fund were to have the preference in the choice of pews, and no one subscribing less than twenty pounds sterling was entitled to a choice. No person could have more than one pew. Galleries were to be built, one for the use of parishioners in general, one for servants, and one for slaves. It was the duty of the sexton to keep in good order the church and churchyard, and sometimes to hang the greens in the church at Christmas, Easter and Whitsuntide. He also attended to the digging of the graves, and, if a married man, undertook to keep the church linen clean. One sexton employed himself in teaching school in the Vestry-house. It was not a rare event for a woman to be sexton.

In every parish church in Maryland, the Vestry was obliged to set up a table of forbidden marriages, and to do all that was possible to prevent infringements of such laws. The Vestry of St. John's Parish, Baltimore County, cited one man to appear and explain his marriage with his deceased wife's sister. Another was summoned for uniting himself in matrimony with his late wife's niece. Both failed to justify themselves, so the clerk was ordered to present them to the County Court. Where there was no rector, the Vestry chose a reader, and paid him from the proceeds of the clergy-tax. A committee, consisting of the "principal Vestryman [here

* Hanson, 1774, Chap. XI.

the oldest] and four of his brethren of longest standing," had to render to the Governor an account of all expenditures of the poll tax during a vacancy in their parish, but this law was not unfrequently neglected. The committee was no doubt suggested by the Reeve and four best men who represented the old English town or parish.*

In the year 1728, an Act was passed restricting the excessive production of tobacco.† Although it was disallowed, its provisions were carried out for a space of three years. Each Vestry, having divided its parish into "precincts," appointed for each, two counters, or tellers, of tobacco plants. The counters appeared and signified to the Vestry their acceptance, and the names of those who refused to serve, without good reason, were presented by the register to the County Court. Previous to 1728, the Vestry had been connected in another capacity with the tobacco interest, for Vestrymen and Church Wardens were included among the officers who could arrest persons attempting to "run" tobacco from the Province.‡ Some years later Vestries nominated inspectors § of the staple. From these nominees, who had to be "able and sufficient planters well skilled in tobacco," the Governor made his appointments. No inspector could vote at the choosing of his successor.‖ It is obvious why the Vestries were concerned in this question. Their main source of revenue was the tobacco, and it was to their interests to see that it did not become depreciated.

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* See "Constables." By H. B. Adams, p. 11.

† Bacon, 1728, Chap. II. As this Act was disapproved it is not given in full in Bacon's Laws, but it may be seen in the Hist. Coll. Amer. Col. Ch. Md., pp. 270–280.

‡ Bacon, 1722, Chap. XVI.

§ An interesting review of the inspection laws of Colonial Maryland is to be found in the Brief of Charles J. M. Gwinn in the case of Turner vs. State of Maryland, U. S. Supreme Court, October Term, 1882. See Note in University Circulars, February, 1883.

‖ Bacon, 1763, Chap. XVIII.

In the young colony inhabited by all kinds of characters, it is not surprising to learn that immorality was prevalent. But means were at hand to restrain workers of iniquity. Persons suspected of immoral conduct were summoned before the Vestry, "to show cause why they should not be prosecuted." Some would promise to marry, others to separate. It is curious to note that a month's time was frequently allowed, in which such arrangements were to be consummated. This may be explained by the fact that, in many instances, the offender was a bachelor with his housekeeper, and, in case of separation, he had to provide himself with a substitute. If the Vestry's summons was disregarded, the guilty parties were admonished by the Minister, or by a deputation from the Vestry. If the evil practices were still continued, information of such a state of affairs was sent to the clerk of indictment at the County Court, where the fact of admonition already given was sufficient evidence to convict offenders. Adulterers and the like were fined, or, in default of fine, could be whipped till the blood ran, but, after 1749, corporal punishment for these offences was abolished. Persons who swore in the presence of a Minister, Vestryman, or Church Warden, were subject to a fine. Any of these officers could commit to the stocks for an hour such an offender who did not pay his penalty, or could appoint, in the absence of a Constable, a deputy Constable to whip the aforesaid. The lashes could not exceed thirty-nine at one whipping.

For certain misdemeanors, penance was done. The Rev. Mr. Wilkinson wrote in 1724, "It has been owned by many that there was a visible reformation on our shore, the sight of one person performing penance struck a greater terror upon all offenders than all the pecuniary and corporeal punishments which the secular courts inflict, as some of 'em have publickly acknowledged."* The following is an account of such a performance: "The fifth day of July last came James Campbell

* Hist. Coll. Amer. Col. Ch. Md., p. 244.

to ye Communion table and asked pardon of Col. Blay and Mr. William Comegys for calling them murderers of ye parish: at ye same place the aforesaid Campbell did condescend to pay what Charge should Increw upon the writ that was served upon him for his fault."* The Vestry of St. Thomas' Parish cited men for running their mills on Sundays. The ecclesiastical censure neither injured the offender in property or person, nor relieved him from further prosecution by the civil authorities. That the excuse of ignorance might not be made, every Minister was required to read from the chancel four times a year the penal laws of the colony.

After Braddock's defeat it was thought necessary to take special measures of defence against the Indians, who in roving bands had come very near the settlements. Accordingly, to pay for an increase in the militia, taxes were laid upon some additional items, among these, "batchelors." The Vestry prepared every year a list of all such delinquents in the parish, who were over twenty-five years old. This list was then fastened upon the church-door, (which, in Maryland, was the usual place for advertising parish business), and when revised and corrected was sent to the Sheriff of the county.† Among the "taxed bachelors" in 1760 were Gov. Sharpe, Messrs. Husband and Love, and the Rev. Mr. MacPherson, rector of St. Ann's, Annapolis. Although the clergy were not legally taxable, yet a number of them appear to have suffered from this imposition upon poor, lone bachelors. The Act continued in force for eight years when it ceased by limitation.

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*Old Kent. By Hanson, p. 355. Penance is still done in England:

"An extraordinary scene was witnessed on Sunday evening July 30, at All Saints' Church, East Clevedon, when a man named Llwellyn Hartree did public penance for the seduction of a servant girl, who now awaits her trial for manslaughter. The church was crowded and the vicar having delivered an address on Church discipline, Hartree confessed his sin and promised to take his place in the Assize Court next to the unfortunate girl upon her trial at Wells." P. 126, "Notes and Queries," Aug. 12, 1882.

† Bacon, 1756, Chap. V. Mills were also used as places for advertising such matters.

Many Marylanders no doubt owe their existence to this tax, for it was, to say the least, an incentive to matrimony. Many names appear but once in the list, and it is to be presumed that their owners had resolved to choose the less of two evils. It was perhaps because "misery loves company," or possibly from the belief that "in union is strength" that this persecuted class sought refuge at church in "bachelors' pews."

As regards the parish poor, colonial laws and local records afford comparatively little information. Legacies were occasionally left to the Vestry for the benefit of the poor, by whom were no doubt meant needy ones connected immediately with the parish church. Where there were endowed public schools, the parish had generally the right of sending a certain number of "charity scholars." It was the law that masters of these schools were to be licensed by the ordinary, and were to teach their scholars the Catechism, and were to bring them to church on Sundays and Holydays. The "Charity School" founded by the indefatigable efforts of the Rev. Thomas Bacon was aided in some measure by "collections at the Offertory on Sacrament Sundays." To this school negroes could be sent and taught to "Read and Write and instructed in the Knowledge and fear of the Lord, gratis; but maintained at the Expence of their respective Owners."* After a great fire in Boston (1760) appeals for help were made to Maryland. Gov. Sharpe ordered collections to be made in all the churches, and his proclamation met with a liberal response. Of the amount raised, members of the Established Church contributed five-sixths. These are examples of the church charities of early times, and they differed little in principle from those of the present. The Vestrymen were also the bankers of

* Bacon's "Sermon, &c.," Lond., 1751. The negroes were not neglected in spiritual concerns. As often as was convenient in some parishes they were instructed and catechised, and baptized. Many were communicants in the churches.

the parish and lent money at the rate of four per cent. interest.*

Thus parish life went on, and the parishioners were instructed in the school of liberty by exercising what little local government they possessed and in the interchange of opinions at the Easter elections or in the closer assembly of the Vestry. But, from its beginning, the Established Church in Maryland met with opposition. Romanists and Dissenters very justly considered that it was an injustice for them to be called upon to contribute towards the support of an alien ecclesiastical system, whose evils but not whose goods, they were accustomed to share. Intelligent observers perceived that the clergy were likely to become demoralized by their connection with the civil authority. The ill-feeling was expressed in many ways. In 1763, the salary of the Minister was reduced one-quarter.† This was done under an Act for improving tobacco. Inasmuch as many planters had been wont to reserve the worst of their tobacco for paying the clergy-tax, it is to be hoped that a reduction of the Minister's salary was a premium upon giving him better tobacco. Efforts were made to increase the number of the parishes, and thereby to decrease still further each incumbent's stipend. Then were passed the laws of 1771 already mentioned.

The underlying cause of this discontent was the strong sentiment of the people that the existing parish system was an infringement of their rights as freemen; and this feeling, without doubt, helped to strengthen that opposition to the mother country, which resulted in the American Revolution. The parish had aided the cause of independence in two

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* In the "Annals of Annapolis" it is stated that in 1696 Major. Edw. Dorsey reported that there was in *Banck*, for building the church at Annapolis, 458 pounds sterling.

† In 1730 it had been decreed that one-quarter of the Minister's salary should be paid in grain or other commodities. The prosperity of the colony, however, had rendered this law in-operative in reducing the value of the livings.

particulars. It had preserved for its adherents the memories of their old English liberties, and by its manifest evils, had taught its opponents to view with jealousy any attempts of England to interfere with the local affairs of the colonies. Having accomplished these things, it had done its best work, and was no longer needed.

A fair idea of the state of the parishes at the outbreak of the great struggle, can be obtained from a perusal of the following extracts from the writings of a clergyman of Maryland:* "Our churches in general are ordinary and mean buildings, composed of wood without spires or towers or steeples or bells, and placed for the most part (like those of our remotest ancestors in Great Britain) no longer perhaps in the depths of forests, yet still in retired and solitary spots and contiguous to springs or wells. . . . In both Maryland and Virginia there are not six organs; the psalmody is everywhere ordinary and mean and in not a few places there is none . . . at present most of our parishes have two churches in which duty is alternately performed . . . in several parishes there are three. Between the list of taxables as set down in the sheriff's book, and what the incumbent actually receives it is well known there is a wide difference. . . . We have but fourty-four clergy. . . . The utmost that the most able and careful of the clergy in Maryland can expect is to live decently in a private way, and to educate their children in such a manner as that by their own industry and a small portion they may be able to live above contempt when we are gone."

The lack of entries in many record books during the next three or four years, serves to show the blank which then existed in parish life. During the Revolution the Church in

* "A View of the Causes and Consequences of the American Revolution, &c." By Rev. Jonathan Boucher. London, 1797, pp. 232–234. Mr. Boucher was a loyalist and received harsh treatment at the hands of his parishioners. A short sketch of his life is given in Neill's "Notes on the Va. Col. Clergy," p. 29.

Maryland lost considerable ground for various reasons. Many of the clergy considered that they were still bound by their oath to the English government. These, and others from choice, adhered to the royal cause and endeavored to induce their congregations to do the same. Consequently great numbers left the Church, and attached themselves to Methodism, which was just beginning to thrive in America. In the "Declaration of Rights," adopted in the Maryland Convention of 1776, it was ordained that no County Court should thereafter levy a tax upon application of a Vestry, or of Church Wardens. The legislature might, however, impose a general tax for the support of the Christian religion, but each person could denote for what denomination his quota should be expended. The property of the Church of England remained in the possession of the parishes, but even those who stood by the Church were too much occupied with the more momentous questions of the time to give much heed to parish matters. The loyal clergy vacated their livings, and the churches thus deprived of their rectors began to decay. The Ministers who remained, being without an assured salary, had to make great shifts to support themselves.

The attention of the Assembly was called to this sad state of affairs, and it passed a new Vestry Act. In a "*general* meeting," the legal voters of a parish, who had paid parish charges, elected *seven* Vestrymen "for the preservation of the church, care of the glebe, and for the happiness and welfare of the State." Their civic duties were taken away, although the Wardens kept the peace in churches, and could eject from them any disorderly persons.* The names of many of the old members now reappear in the record books, but the titles of "Colonel," "Major," &c., have been added. The members of the Vestry now chose their Minister, and paid him by the subscriptions of the parishioners. Grain was the principal commodity used in payment of such debts. This was col-

* Hanson, 1779, Chap. IX.

lected through personal application by the Vestrymen. The Minister controlled the glebe (which was vested in the Vestry) during his incumbency. When any improvements were made, some parishioners contributed material, others their services. Sometimes the glebe was rented, in which case the lessee agreed generally to improve it.

In 1798,* another Act became the law upon which is based the present existing Vestry system of Maryland; for, later laws referring to the incorporation of religious bodies have the proviso that nothing therein contained shall affect the election of Vestries according to the usages of the Protestant Episcopal Church. Although this Act is easy of access, it may be well to mention the most important features. Eight Vestrymen were elected, the former Vestrymen being the judges of election. All Vestrymen and Church Wardens took the oath of fidelity to the Government, professed belief in the Christian religion, and subscribed to the oath of office. The first Monday in February, May, August, and November was the legal vestry day. Four members constituted a quorum. The Minister was chairman and collected the votes. If there was a tie he had the deciding voice, unless he was personally interested in the result. The Vestrymen chose the Church Wardens, and "called" their rector. The Vestry was a corporate body, but could dispose of no church property without the consent of both of the Wardens.

At present Vestries are governed by the provisions of their charters, if they have any, which conform generally to the Constitution and Canons of the Diocesan Convention. Parishes still exist as geographical divisions, and there are also "separate congregations" whose Trustees are called Vestrymen. For example, St. Paul's Parish is Baltimore City and a part of Baltimore County. But within this parish are more than two dozen congregations. The power of constituting,

* "A Compilation containing the Constitution and Canons of the P. E. Church in the Diocese of Md., &c.," pp. 73–104.

dividing and uniting parishes is vested in the Convention of the Diocese. Many of the old glebes have been sold, and in some parishes the proceeds have been converted into stocks or bonds. Where there is a glebe, the minister sometimes farms it, for the country clergy are not the best rewarded individuals. There are eight Vestrymen, four of whom are voted out and their places filled at congregational meeting on Easter Monday in each year. Vestrymen are reëligible and are generally continued in office. Very often the meeting of the congregation consists of the members of the old Vestry, who solemnly reëlect themselves. It is on record that at one meeting in Baltimore the only persons present were the two Wardens, who appointed each other chairman and secretary, respectively, and elected the Vestry. The Vestry elects two Church Wardens either from their own body or from the congregation. The Wardens, if they are not also Vestrymen, cannot vote in Vestry meeting, but can take part in discussions. In city churches, one of the Wardens makes preparations for the celebration of the communion, but in the country it is a matter of convenience as to which of the officers of the church shall attend to such matters. The Wardens may assist at the offertory. They notify the Bishop of the election of a new Minister, and may also certify the election of lay delegates to the Convention, but the Register of the Vestry generally does this. Although the powers of officers of the peace were taken from the Wardens in 1802, nevertheless, as representatives of the Vestry, they still have the ancient right of keeping order in church, and are objects of terror to small boys or other disturbers of public service. The Wardens are also the custodians of the church property.

The parish of Maryland, which was originated here for religious purposes, but which, as an institution by English people, naturally possessed some of the historical features of the old English parish, gradually severed its connection with civil matters, until to-day it exists for the furtherance of ecclesiastical objects alone.

EXTRACTS

FROM THE

PARISH RECORDS OF MARYLAND.*

Prince George's Parish.

Whereas at the Request of the Inhabitants of the Eastern, Branch and Rock Creek, The Reverend Mr. John Frazer did appoint this present day being the 18th day of September 1719, For the said Inhabitants to meet in order to make Choice of a proper place for building a Chappel, and Contributing towards building the same.

And forasmuch as very few of the Inhabitants are met on this Occasion, those therefore present, to prevent delays have thought fitt to Subscribe their Names, and what Sums they are willing to give, and have Nominated the place they think most proper, Leaving Room in said Collum for other of the Inhabitants to Name what place they think more Convenient, that so a proper place may be pitch'd upon by the Majority.

Benefactors Names | £ | s | Tobo in £s | Proper place for build.

December the 3d 1726

Then met the ffreeholders of Prince Georges Parish at the Parish Church at Rock Creek, As is directed by Act of Assembly to Choose Vestry Men, and other Parish Officers, And accordingly they made Choice of the following Gentlemen to be Vestry Men, (vizt) Mr. Natht. Wickham Junr. Mr. John Powell, Mr. James Holmeard, Mr. John Flint, Mr. Joseph Chew, and Mr John Pritchett. And for Church Wardens Mr. Caleb Lutton, and Mr Wm Harbin; and they Qualified themselves for their Places, by taking the Several Oaths as the Act of Assembly directs for Such Officers to take.

After the Election was over, the Gentlemen of the Vestry met, and made Choice of Willm Jackson, for their Register, and appointed to meet again on Fryday the 16th December 1726.

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* These extracts from Maryland Parish Records have been published through the kind co-operation of gentlemen in Baltimore, and, it is hoped, will excite enough interest to bring about a more general movement towards the publication, not only of decaying parish records, but also of many other ancient documents, which if not rescued now will soon crumble to pieces.

Fryday December the 16th 1726

The Gentlemen of the Vestry met according to appointment (all present) and agreed to allow Wm Jackson Eight hundred pound of Tobacco ℔ Annum for being Register, and likewise ordered that a Letter Should be forthwith Sent to Mr John Bradford desiring the favour of him to meet them at the Parish Church, on the 3d day of January 172$\frac{8}{7}$ about the land the Parish Church Stands on, to make it over.

Tuesday the 10th January 172$\frac{8}{7}$*

The Gentlemen of the Vestry according to appointment met all present. And Invested Mr George Murdoch as Rector of this Parish, he behaving himself well and doing his duty, duely, and truely, as an Incumbent ought to do.

His Induction from his Excellency to the Gentlemen of the Vestry

Maryland ss:

Charles Calvert Esqr Governour of Maryland, and Commander in Chief &c. To the Gentlemen of the Vestry of Prince Georges Parish, in Prince Georges County Greeting.

Whereas the Reverend Mr George Murdoch an Orthodox Minister of the Church of England, was sent and Recommended by the Lord Bishop of London and Diocesan of this Province to officiate as such in Virginia or Maryland, I do therefore Recommend and appoint the said George Murdoch to be Rector of your Parish, and direct you to Recieve him as Incumbent thereof, and will you to be aiding and assisting to him, in all things becoming, to the end he may Recieve the full benefits and Perquisites of his Office appertaining, together with the fourty ℔ Poll arising within the Parish aforesaid.

Given at the City of Annapolis this 29th Day of December in the thirteenth Year of the Dominion of the Right Honl Charles Lord Baron of Baltemore, Absolute Lord Proprietor of the Province of Maryland, and Avalon &c. Annoque Domini 1726. And in the thirteenth Year of his Majesties Reigne

Cha Calvert.

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* Until 1752, the 25th of March was observed in England as the beginning of the year. Most European nations had already adopted the reform calendar of Gregory XIII. (1572). The English, always slow to accept outside innovations, had retained the Old Style, but, for convenience in foreign trade, were accustomed to use both the Old and the New Styles between January 1st and March 25th. So January, 172$\frac{8}{7}$, means that it was in the year 1726, Old Style, but in 1727, New Style. For further information in regard to the change see the article "Calendar" Ency. Brit., Hening's Statutes, Vol. I, p. 393, &c., Mag. Amer. Hist., Vol. VIII. p. 223, also a pamphlet entitled "What New Doctrine is This?" and the Providence "Monthly Reference List" for October, 1882.

The following is a Copy of Mr George Bealls
Obligation for his performance of the building the
Vestry House.

Know all Men by these prsents, that I George Beall of Prince Georges County in the Province of Maryland have agreed with the Gentlemen of the Vestry of Prince Georges Parish, to build a Vestry House 16 Foot long, 12 Foot wide overjetted, an Inside Chimney, the House to be 8 Foot pitch'd plank'd above and below, a plank door to the House, with Lock and key, and Iron hinges, the boards to be all drawn a Small plank Table, the House to be fram'd, and to find All Necessaries whatsoever, and to have it compleated workman like by Easter Sunday it being the 2d day of April next ensuing the Date hereof, and to have for doing the Same, Two Thousand five hundred pound of Tobacco, if not Compleated and finished according to Agreement, to forfeit Five Thousand pound of Tobacco; Just Causes to the Contrary Excepted, As Witness my hand this 10th day of Janry 172⅞

Signed before the Vestry — Geo. Beall
Witness
W. Jackson Regr

April the 3d 1727. Being Easter Monday the ffreeholders of the Parish met. According as the Act of Assembly directs to put out two of the Gentlemen of the Vestry, and to Choose two others in their Rooms and likewise two Church Wardens, They thought fitt to put of the Vestry Mr Nathl Whickham Junr and Mr John Powell, and Elected Mr Willm Harbin and Mr Thomas Lucas in their Rooms, and likewise Chose Mr John Harding, and Mr Grove Thomlinson Church Wardens for the Ensuing year, in the Room of Mr Willm Harbin, and Mr Caleb Lutton. And they Qualified themselves for their places by taking the Several Oaths as is Directed by Act of Assembly for Such Officers to take.

At the same time the Gentlemen of the Vestry Consented that Mr Murdoch should preach to the upper inhabitants of the Parish, every third Sunday, in some Convenient place, they shall appoint.

Sunday the 28th May 1727. After Divine Service the Gentlemen of the Vestry met About Sending for Books for the Use of the Church.; Mr Jams Holmeard offered to Send for them if the Rest of the Gentlemen thought fit, and they accordingly accepted his offer, and desir'd he would send for the following Books, (vizt) One Large folio Church Bible, Two Large folio Common Prayer Books, and he Should be paid in Tobacco at 1d ℔ pound.

Tuesday the 15th August 1727.

The Gentlemen of Vestry according to appointment met (all present) to treat with workman about Erecting Pews in the Church, and they

Agreed with Mr Mingelde Page to Erect fourteen Pews, and to alter the Desk, and to make it less, and to make a place for the Clark to Sit in . . . and to pay him Five Thousand Pounds of Tobacco for Doing the Said work.

And likewise agreed to pay Mr George Beall Three hundred Pounds of Tobacco, for puting up two new Girders in the Church.

And likewise to pay Mr Nehemiah Ogden Three hundred Pounds of Tobacco for Iron work for the said Girders.

And likewise to pay Mrs Mary Ann Powell Two hundred and fifty Pounds of Tobacco, for a Dyaper Cloth, and two Napkins, for the Communion Table.

And likewise to pay William Jackson One hundred, Sixty Eight Pounds of Tobacco, for a book to Record, the Several proceedings of the Vestry.

Tuesday the 21st November 1727.

At the same time they agreed to pay Mr Grove Thomlinson Church Warden Two Hundred and Sixteen Pounds of Tobacco for Wine for the Sacrament, due from Easter to this time.

And likewise to pay Owen Read Three Hundred Pounds of Tobacco, for Digging a Well, and making a back in the Vestry House.

And likewise The Reverend Mr George Murdoch agreed to pay the Gentlemen of the Vestry, for the Use of the Parish, Two Thousand Pounds of Tobacco upon Condition that he might Recieve the fourty ℔ Poll, for the whole Year, when but Eleven Months his due, which amounts to the said Sume ℔ Month, which they agreed too.

May the 15th 1729

The Gentlemen of the Vestry, and the Church Wardens of the Parish met, pursuant to an Act of Assembly, to Nominate, and appoint Counters to Count Tobacco Hills &c^{a} in the Several Hundreds in this Parish.

And accordingly they Nominated, and appointed, Mr Thomas Fletchall, and Mr Alexander Magruder to be Counters for Potomack and Minocezsy Hundreds.

And Likewise Mr James Beall, and Mr Nicholas Baker for the Eastern Branch Hundred.

And Mr Thomas Lucas, and Mr Thomas Lamar, for Rock Creek Hundred

At the same time Orderd that William John Jackson be paid Eight Hundred pounds of Tob^{o} for a Years Salary for being Register, and finding paper &c^{a} for the use of the Parish.

And Likewise Order'd that Grove Thomlinson Church Warden be paid One Hundred, and fourty pounds of Tobacco for Wine for the Sacrament, & his Extraordinary Trouble in fetching it.

And Order'd that no Churchwarden hereafter be paid anything for their Trouble &c^{a}

June 29th 1731

Order'd that the three Hogsheads of Tobacco Rec'eed of the Sheriff on the Parish accompt Be Shipt to Mr Isaac Milner Merchant in London on the Parish Risque and that the following Goods be Sent for, (for the Produce of the Said Tobacco) for the Use of the Parish Church.

Five Casements three Inches long, and Seven Inches Wide
Eive lights Thirty Inches Long and Seventeen Inches Wide
Ten lights Twenty one Inches long and Seventeen Inches Wide
Two lights Twenty Inches long and Eleven Inches Wide.
And a Surplice.

Order'd that Ralph Lannum be Paid Fifty pound of Tobacco for Rolling one of the Said Hogsheads.

Febry the 7 173$\frac{2}{3}$

. . . . Order'd that Summons be Issued for Nehemiah ——— and Wm ——— to appear before the said Vestry on Easter Monday. . . .

Easter Munday March ye 26th 1733

. . . Also Nehemiah ——— and Mary ——— not Appearing According to Appointment to Clear themselves of the Suspition of Fornication were Order'd to Seperate &c.

March ye 31th 1733

Then Benja Murdoch Clark of the Vestry Pursuent to the Abovesaid Orders Concerning Nehemiah ——— & Mary ——— & William ——— & Grace ——— did Serve them &c.

On Whitsun Munday May ye 14th 1733

Also Neh. ——— Appear'd & Said he was Maried to the Woman that he is Accus'd of Living in Fornication with but could Shew no Certificate nor any other Proof but Said Since the Vestry was not Satisfi'd he was willing to be publish'd And Mari'd Over Again which the Vestry thought fitt to Consider Upon & that providing that the Woman would Goe in A Short Time and swear before a Magistrate that She knows nothing of her Husband being alive. It should be done otherwise to proceed according to Law.

A Coppy of Mary ——— Oath.
Prince Georges County Augst 8th 1733

Then came Mary ——— before me one of his Lordships Justices of the County Court & made Oath on the Holy Evangelists of Almighty God that She had not Seen or heard from her Husband William ——— Either by Letter or Proxsey for this Eight or Nine Years bygone & doth not at this Time Believe he the Said William ——— is Alive Sworne before me Date Above Written Jos: Chew.

On Munday November the 5th

Then it was Agreed that Nehemiah ——— & Mary ——— should be Presented the Court Ensuing if he be not Married before that Time.

Easter Monday April ye 7th 1735.

Also Agreed with Mr John Bell Churchwarding To Alow him foure hundred & fifty lb of Tobacco for finding Bread & Wine for the Sacrament & taking Care of the Linning and Vessels for the year Ensuing.

May ye 6th
1735

Then Agreed with Bingle Page and Benjamin Perry to Build a Gallery fitting it with Seats as Maney as is convenant and to be done workman like likewise to put Eight good Substantial new Blocks of Locas or Chestnut well Season'd to the Said Church and also to put Six good blocks to the Vestrey house in the roome of those that are alredey there qualefied as the other before mentiond and to have for the Same Six Thousand pounds of Tobacco (makeing good the Wether bording of the Church and the West dore) to have it Compleatly finished by the twenty fifth of December Next on the penalty of Nine Thousand pounds of Tobacco.

Octr 7e 14th
1735.

Then it was agreed with the Revd George Murdock that he Should pay for two years Quit-Rent for the Glebe-land (Viz) Eight Shilings Sterling to Mr William Diggs and be Deducted out of what he owes to the Parish.

Novr 7e 5th
1735

Likewise that Notis Should be given to the freeholders &c And Notes Set up that on the first Tuesday in Decr the Vestrey to meete to agree about the Sale of the Pewes.

Sept 7e 28
1740

At the Same time the Revd George Murdock Brought In the following account (Viz)

	£	s	
To 10¾ Ells of Holland for a Surplice at 14 Shilings ℔ Ell	7 —	9	0
To Making	1 —	10 —	0
To Thomas Willson for survaying the Chapl Land	1 —	0 —	0
To George Murdock for Commone Truble	1 —	0 —	0
	10 —	19 —	0

which was agreed that he Should have an order on William Murdock Late Shrieff and Acordingly had one for the Sd Sum (Viz 10 pound Nineteen Shilings

Novr ye 18th
1740

. . . and at the Same time Mr Francis Finn brought a Letter from Mr John Prichard with this Subscription

For the Lay Gentlemen of ye Vestrey of Prince Georges Parish.

Which was orderd to be Recorded & is as followeth

Gentlemen

I Reced a Letter from John Flint who stiles himself Clerk of ye Vestrey and by Your Order requires me to Attend ye Vestry to Morrow to clear Myself of a supition of my living in Adultery I look upon my Answer in writing to be as Sufficient and as clear as if I was before You. And therefore deny the charge, If I could Possibly leave my sickly Negro family and with convenience be absent from my buisness In Attending my Store I would however wait Upon you Gentlemen of the Laity.

But whilst your Rector is there I hope to be Excus'd for that I look upon the Censure to proceed from his malice and Vexatious temper, in the intervales of his want of ye right use of his sences the deprivation of which at some times he is Deem'd to be under in the opinion of Severall of his Brother Clergymen and Severall Gentlemen in this & the Neighbouring County Therefore I do not think proper to Attend Your Sumons whilst he is present.

I am with due Respect Your most
hum Servt

Novr ye 17 1740 Jno Prichard

And the Vestrey thought fit to Refer their opinion whilst the third tusday in December.

June ye 7
1743

Likewise agreed to lend Samuel magrouder ye 3d Twenty five pound at 4 ℔ Cent ℔ Annum.

And Ninnian Maugrouder Six pound at 4 ℔ Cent do

And John Flint Six pound at 4 ℔ cent ℔ Annum

And John Claggett thirty two pound at 4 ℔ cent do

And all off them to give Security for the payment of the Same to the Said Vestrey with the Intrest due thereon according to their severall Sums and time.

Octobr ye 4th
1748

Then the Gentlemen of the Vestrey met Present . . . .

And did Nominate and Recommend for Inspectors At Mr George Gordons warehouse at the mouth of Rock Creek The following Gentmen (Viz)

Capt Alexander Maugrouder
Messrs Josiah Beall
John Clagget
Alexander Beall Son of Willm Beall

Likewise for Bladensburg
Messrs Samuel Beall Junr
Nicholas Baker.

Mar ye
27 1749

Then came the folowing Certifiecation

Prince Georges County Decem ye 5th 1748

Mary Land ss:

I Hereby Certifie that this day Came before me The Subscriber one of his Lordships Justices for the County aforesaid Alexr Beall and Qualified himself by takeing the severall oathes to the Goverment as Alsoe the oath of Inspector and Declard the test & Subscrib'd the same and the oath of Abjuration

Sworne before Jno Cooke

To the Vestrymen & Church Wardens of Prince Georges Parish }

May ye 12
1751

And at the Same time Orderd that I Should Acquaint his Excellence with the Death of Alexr Maugrouder one of the Inspectors for Rock-Creek Inspecting house and who was the Next Nominated for Inspectors

Likewise to set up notes to Acquaint all the freeholders to meet the Vestrey the first Tusday in June for to Chuse one for a Vestrey man in the Rome of Alexr Maugrouder being Dead, and for any Carpinters that will undertake the Raileing of the Chappel yard and the Chancel to meet at the Same time And place.

July ye 20
1756

Then the Gentmen of the Vestrey met pressent. . . . . .

And after taking the Oath Appointed for that Purpose did Nominate the Batchelors in the Said Parish aged Twenty five years and upwards with the place of abode and Value of there Estate. . . . . .

April ye 18th
1757

Memorandum that John Tyson Bought a Botle Screw of Mr Robt. Mundell on ye Parish acct price on Shiling.

Tusday December 4th 1759

. . . . at Which time the Reverend Mr Clement Brooke Informed the Vestery that the Reverend Mr George Murdock had Imployed him the Said Brooke as his Currate to Officiate in his the Said Murdocks Parrish. The Vestery not being fully Satisfied Concearning the Matter In Dispute between the Reverend Mr Thomas Johnson and the Revend Mr Clement Brooke Thought Proper to Adjorn to the Reverend Mr George Murdocks house on Saterday the Eight Instant In Order to Take Moore fuller Instructions from him the Said Murdock he being very Ancient and Incapible of Attending the Vestery.

June 27th 1768 Att Rcreek Chaple

. . . . att the same Time the Vestry agrees that Messr James Burnes and Edward Villers Harbin do meet at Geo. Town On the 25th day of July in Order to Exspose the Parish Tobacco to Publick Sale and that Simon Nicholls Advertise the Same.

Tusday March 24 1767

Order that Simon Nicholls Purchas at the Cost of the Parish One of the Revd Mr Bacons Body of Law for the use of Said Parish.

St. John's Parish, Baltimore County.*

[July 30, 1739.]

Then did the Reverend M. Bourdillon inform this Vestry that it was his Excellency the Governors pleasure to Call him to Afficiate in Another parrish and that he did resign Up to his Excellency this parrish. . . .

[July 8, 1740.]

Mr Richard Caswell being Elected a Vestry man last Easter Munday for this Parrish but he being Corroner is not oblidged to Serve in said Office Therefore it is now ordered that the Clerk putt up notes for the Parritioners of said Parrish to meett in the Town of Joppa on the first Tuesday in August Ensuing in order to Chuse a Church Warden.

[May, 1742.]

Ordered notes be put up to employ any person that will undertake to make and bring To Joppa Twelue Thousand bricks †

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* In the extracts from the books of St. John's and All Saints' Parishes, the dates in brackets are merely for the sake of reference and are not a part of the original record.

† Many of the old churches in Maryland were built of bricks brought, it is said, from England. But all bricks used in the Province were not imported, as the following facts

[June, 1742.]

Mr William Dallam agreed with the vestry to deliver Twelve thousand bricks at Joppa Town in the parrish Church yard & to be viewed by Two of the Vestrymen who shall be At that time quallified According to Law & if sd Bricks be Approved of by the Two Vestrymen as Aforsd to be good & Sufficient then the Vestrymen do agree to pay the said Mr Dallam thirty Shillings Currant money ℔ thousand.

[Oct. 4, 1743.]

The Vestry agrees that Superscription should be offered to the Inhabitants of this Parrish in order to Raise as much Money as will Build an Addition to the North-side of the church.

[Apr. 3, 1744.]

Ordered that Summons Issue for Jacob Jackson and his present wife who was Neace to his Deceased wife to show cause if any why they shall not be prosecuted According to Law, for Marrying contrary to the Table of Mariage.

[May, 1, 1744.]

Jacob Jackson and his wife appearing According to a summons Issued from the last Vestry returnable here now, and haveing no Legall Defence to make and it fully appearing that they have Married contrary to the Table of Marrage it's ordered that there be an Information made thereof to the Next county Court to be held for Baltimore.

John Leatherbury agrees to do the Brick work of a Vestry house for which he is to have Thirteen shillings ℔ Thousand for Laying the Brick and to find himself Diet and Lodging he is to Begin the said work by the Twentieth of June & have it finished with all expedition

[May 5, 1747.]

The vestry have agreed with Mr Walter Tolley to make Twenty thousand bricks to Be merchantable and delivered in the church yard at or upon the Twentieth Day of July next for which he is to be paid thirty Shillings currant money ℔ Thousand.

[June 2, 1747.]

The vestry here present have agreed with James Sage to lay about twenty thousand bricks in Two porches by way of buttments to the church for which they are to Allow him at the Rate of Ten Shillings ℔ Thousand the vestry finding him Accommodations and Attendance the Work to

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clearly prove. As early as 1694, a contract was undertaken by a resident of Kent Island to *make* a certain number of bricks for building a church. Of course these bricks were in quality inferior to the imported ones, but the people were not so ignorant of the resources beneath their feet as some suppose. However, bricks were valuable and the total disappearance of certain old towns may be explained by the fact that, when all the townsfolk sought a more favorable site, they carried the bricks of their houses with them.

begin so soon as the bricks Shall be burned and ready the said James to be paid for said Work three months after finished.

[August, 1747.]

Mr John Day son of Edwd Appears & declares he keeps a publick house is therefore Exempt from the office of a vestryman and is from this day by the vestry here Present discharged from said office.

[April 11, 1748.]

Mr Thomas Gittings is by the majority of ye parrishioners here present chosen As a vestryman to Serve in said Office three year's from this date According To Act of Assembly.

[July, 1748.]

Ordrd that the clerk put up notes to Advertise that the ground in the new Addition to the church Whereon may be built Ten pews 7' feet deep & 5 feet wide is to be sold at said parrish church on the first tuesday in August next at three clock in the Afternoon by Way of publick vandue to the highest bidder or bidders for currt or Sterling money.

[April 3, 1750.]

Ordered that publick notice be given that no person presume to break any of the Church ground on any pretents whatever before Applying to the Sexton.

[June 4, 1751.]

Robert Price has an Order on Mr Thomas Sheredine high Sherriff of Baltimore county for the Quantity of five hundred pounds of Tobo being for his Acting as Sexton for this parish One Year.

[Aug. 4, 1752.]

Then was Five thousand seven hundred & ninety Four pounds of Tobo charged to Messr Thos Sligh Walter Tolley and John Paca Junr They being the surities of Mr Thomas Sheredine in relation To his due performance in his Sherriffs Office.

[Sept. 1, 1752.]

The vestry have agreed that no seats in the Addition shall be Apropriated but all held in common for This reason because their bargain with Mr Walter Tolley relating thereto has not been complyed in By him therefore its agreed what was disbursted by said Tolley on Account of the said work Shall be refuned to him with Interest by the said Vestry.

John Giles Appeared According to his summons from the Vestry for marrying Hannah Scott sister to His late wife Deceased, and being Admonished to put her away has refused to do it therefore the Vestry hereby Orders the Clk. to make Presentment to the grand Jury against the said Giles & said Hannah Scott, as haveing Offended against the Act of Assembly in that case made and provided.

[March 6, 1753.]

A Dispute ariseing about the boundery between Saint Pauls and Saint Johns parrish, The Vestry have Taken the same into consideration and have Appointed Messr Walter Tolley and Richd Wilmott to meet Two parrishoners of Saint Thomas's Parrish to Enquire Into the said boundery and to report the state of the case on or before the first Tuesday in June Next to the said Vestry of Saint Johns, parrish.

[Aug., 1753.]

Then the vestry agreed with Mr Roger Boyce to cause to be made Ten or Twelve Benches Ten Or twelve feet lenth One and a quarter Inch thick Fourteen or fifteen Inches broad of white Oak or popler, the said benches to be placed at Nichos Hutchens and to be by him Kept From the weather for which the vestry have agreed to Allow the said Hutchens One hundred Pounds of Tobo for Every time Church is There Kept, ...

[May 2, 1758.]

The vestry having been informed that Joseph Crook Vestryman of this Parish Aiding Abeted in a Certain Riot commited in the Town of Joppa Easter Monday last & was In church Neither Easterday nor monday. Therefore the Vestry are of Opinion that the Said Jos. Crook Be no longer a member of the said Vestry and hereby Impower the Rector to Call upon him & give Notice hereof to the Parishioners to Chuse a New member In his Room,—*

[Oct. 2, 1759.]

Whereas. the Reverend Mr Deans Complained to the Vestry that Peter Carroll and Robt Price Tenants on the Glebeland have committed great wast on the said lands And have Also Subsett the said lands, And whereas. the said Carroll and Price & The Reverend Mr Deans, have Left to the Vestry for Remediing the same And they having Viewed the said lands— Therefore are of Opion that All the former Leasses shall be Revoked and New ones, Granted in their Stead Upon the Terms of the former Leases, Subsetting and was Being Especially Barred.

It is also the Opinion of the Vestry That one Vestryman & the Two Wardens Shall Yearly Examine weather any further Wast or Subsetting shall Be Done on the Glebe lands.

[Sept. 2, 1766.]

Jno Roberts had an Order from the vestry on Robt Adair Esqr Sherr. for five Pounds One shilling and tenpence half penny Currcy Being for

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* Easter occurred this year on the 26th of March. In the absence of any other record of the "riot," it may not be amiss to suggest that it was probably the accompaniment of the Vestry election. At that time there were no "primaries," and consequently riotous spirits had to find vent in parish elections. As the voting was *viva voce*, it was easy to detect one's opponent.

some wood for the Parish use and his Acting as Clk of the vestry one Year Ending July the Fourth.

[Sept. 6, 1768.]

Ordered Jn° Beale Howard Be paid what Cost he is at on Acct. of An Attachment Laid in his hands as a vestryman by Rich^d Johns, if not Recovered of said R^d Johns.

[Aug., 1779.]

Ordered that the Register procure from the Assessors of the several Hundreds in this Parish a List of the Parrishioners Names. That for the future the Vestry meet at the Vestry House to do Business.

[Feb., 1780.]

M^r Worsley Requests the Favour of the Vestry to Collect the last years Sallary due 1^st March & to take such Methods as they think proper for this year.

M^r Rumsey Agreed to take his Hundred. M^r Cowan Agreed to Collect all near him, M^r Jn° Beale Howard to Collect all he could. M^r T. G Howard D°. M^r Tolley being disordered in his feet could not go about.

M^r Worsley proposes that the Gentlemen who are so kind to take this trouble will at the same time make Memorandums how & what each Subscriber will pay for this Year in Cash or produce

The Vestry Agreed with M^r Worsley to Continue Minister, who informed them he had let the Glebe for this Year.

N. B. The following Memorandum was made upon Paper in May last & lest it sho^d be lost is now transcribed into the Vestry Book . . . . .

A Letter from S^t James's Parish was delivered by two Vestrymen of the s^d Parish, to B. Rumsey & J. B. Howard Esq, & afterwards shewn to the rest of the Vestry, who thinking it a Matter which concerned the whole Congregation, as much as themselves, desired M^r Worsley to read it in the Church & take the Sentiments of the whole Parish, that no Umbrage might be given; the Purport of which as appears by the Letter, was to request the Attendance of the Minister of this Parish one Sunday in the Month, at S^t James's Church. It was accordingly done, in a full Congregation & every Person present was unanimous in agreeing thereto; & no Vestry meeting, the Gentlemen of the Vestry were waited upon by M^r Worsley to know if they agreed with the Congregation & B. Rumsey, Esq, Col. A. Cowan, J. B. Howard Esq, T. G. Howard Esq, Major Ja^s Gittings & M^r John Day, severally declared their Assent thereto; M^r Worsley therefore proposed the following Regulations for Divine Service

Monthly — Quod Attestor Rogatus
The first Sunday—Joppa — Geo H Worsley.
The second Sunday—at M^r Hunters in Joppa Parish

The third Sunday—at Joppa
The fourth Sunday—at S^{t} James's Church
The fifth Sunday—at Joppa.

Joppa Dec^{r} 11. 1780

Rec^{d} of the Rev^{d} M^{r} G. H. Worsley Orders for Twenty One Bushels of Wheat being in full for my Sallary from March 1780 to March 1781 p^{r} me

Alexander Gray.

Mess^{rs}	
10	A. Cowan
7	S. Birckhead
4	W. Mashers
21	

[Dec. 24, 1781.]

Hannah Ingram the Sexton appeared and informed the Vestry M^{r} Phillips protested the Order for seven Bushells of Wheat part of her Sallery due for the Year 1780 and also prayed Payment for the Year 1781.

[June 3, 1782.]

The Register is ordered to write to the Tennants on the Gleib to come and Settle their Accounts at the next meeting of the Vestry.

All Saints' Parish, Calvert County.

Ann^{o} 1704

Viz

July y^{e} 2^{d} This day y^{e} Vestry meett — M^{r} Thomas Cocksutt
Then y^{e} Vistry agreed with Tho. Seager — M^{r} James Heigh
to be sexton for to take care & look after — M^{r} W^{m} Darrumple
y^{e} Church & also to sweep itt & Open y^{e} — M^{r} Joseph Hall
Church doors and Windows & to secure — M^{r} Jn^{o} Smith att Cocktown
them againe & in y^{e} Winter time to make — M^{r} Jn^{o} Smith att Hallerick
fire in y^{e} Vestry & also to cleare y^{e} Spring & doe all things fitting for y^{e} Said place & in consideration thereof they agree to allow him one halfe of y^{e} profitts old W^{m} y^{e} Duchman y^{e} Other halfe & after y^{t} to have y^{e} whole profitts ariseing theirefrom

y^{e} Vestry Adjd till y^{e} next meeting

Jan^{ry} 5th 1710

Resolved that Those p^{r}sons that take up Pews & not ffreeholders, haue the pews no longer then they Continue in the parish, & When they

remoue, or dye, the pew to belong to the parish, to be disposed of by the Vestry.

Ord^dd^ Y^t^ Mr^r^ Wadsworth pay to M^r^ W^m^ Smith two hund^d^ pound of Tobaco, due from him to the parish for his part of the pew in the porch.

[Nov. 15, 1711.]

. . . . ordred that Tho^s^ Seager burn the Leaues Round the Church and Church y^d^ and at all Times To p^r^forme his office of Sexton as formerly Takeing noe Notice of What Tho^s^ Hillry forewarneing him to Digg Graues.

[May 8, 1721.]

At a Vestrey met and held at All S^ts^ Parish Church Caluert County the Eight day of May One Thoussand Seven Hundred Twenty one, by the Vestrey men thereunto appointed and authorised being p^r^sent

M^r^ Thomas Cockshutt
M^r^ James Heighe
M^r^ John Smith
M^r^ Abraham Downe

Ordered that the Clerk of the Vestrey do Enter the Depositions of Charity Whittington, and Naomy Doreing in the Register of All Saints Parish and also to Register the birth of Leuine Bagby who was born in the year of our Lord 1677 as appears by an Old bible, now in the Clerks hands and presented to this Vestrey.

Ordered that Samuel ffowler Sen^r^ be allowed one Thousand pound of Tobacco for his being Sexton and Looking after the Church this Ensueing year.

The Vestrey Ajourns till the 15^th^ of this Instant.

[Oct. 9, 1722.]

It is agreed on by the Vestry that M^r^ Thomas Lingan & partners haue their Choice of the pews in the New porch in Consideration that the pulpit be Removed into their Pew—N^o^ 27.

[Oct. 30, 1722.]

Order'd that Samuel ffowler Sexton Wash and Clean the Church and Clear the Church Yard as soon as possible if he doth not Comply he is to be mulct of his wages.

Order'd that M^r^ Richard Smith Merch^t^ haue the fourth part of the Ministers pew he paying to the Vestry two hundred pounds of Tobacco for it.

[May 5, 1724.]

Order'd that Coll. John Smith and M^r^ Sab^t^ Sollers haue Liberty to haue a Small Narrow Window made with an Arch'd Top ouer Each of

their Pews prouided that it doth not Damnify the Church and they to haue it done on their own Cost.

[Nov. 14, 1725.]

The Vestry orders Richard Stallinges Clk. of the Vestry to go to Court to desire the Court to Leuy three pounds of Tobacco ℔ poll on y^e^ Taxable persons of the parish to pay the parish Charges.

[Apr. 11, 1726.]

The Vestry agrees with Martin Wells Carpenter to mend the Upping Block on the South Side of the Church and to put in a good Locust piece at Each Porch door and the Vestry house Door to fend off the water and agrees to pay him two Hundred pounds of Tobacco.

[May 15, 1729.]

Then the Vestry Laid out the S^d^ Parish into nine precincts and Chose two persons in Each precinct to be Counters of Tobacco &c according to the Act of Assembly. . . . . .

Ordered that R^d^ Stallinges Clk. of the Vestry giue to Each and Every of the Counters a Copy of the Order for their being Chosen by the Vestry and a Copy of their Precincts.

[July 4, 1734.]

Ordered that the Necessaries for the parish use that Cap^t^ Joseph Wilkinson was to Send to England for, that the Reverend M^r^ James Williamson doth agree with the Vestry to Send for, and to Charge but Twenty five ℔ Cent Sterling on them from the first purchase of them and to haue Tobacco for the Same at a penny p^r^ pound Sterling Viz^t^ a purple Velvet Cushion a yard Long for the Pulpit with Gold fring, a Large Church Prayer Book, a new Surplice, for a man of midle Stature, a Spade, and a Decent free Stone font for the Church, Ordered that the Reverend M^r^ James Williamson haue an order on M^r^ Gabriel Parker late Sher^t^ for the Ballance that is in his hand due to All S^ts^ Parish in part of pay for the above Necessaries.

The Vestry fines M^r^ William Holland Vestry man and Mr. Roger Boyce Church Warden for their not attending at this Vestry the Sum of fifty pounds of Tob^o^ Each.

[Dec. 3, 1734.]

The Vestry Adjourns for one Hour, then to meet at the House of the Reverend M^r^ James Williamson to View the Library &c.

Then the Vestry did View the Library and found all in order according to the Cattalogue except two Books which were wanting [Viz^t^] the Practical Believer in 8Vo: and Doctor Hornecks Delight and Judgment.

[Nov. 30, 1736.]

This day Mr. Richard Blake Vestryman Reported to this Vestry that himself and Mr. James Heighe Church Warden forewarn'd George ——— and Mary ——— not to Cohabit together for the future upon their Penalty as the Law in that Case Provides.

[Nov. 2, 1742.]

Ordd that Rd Stallinges Regr Set up Advertizement at ye Church Door to acquaint ye parishoners of Sd parish that they come forthwith to Sd Regr & haue all former & futur Births, Marriages and Burials put on the Parish Records or they will be prosecuted as the Law Directs.

[May 19, 1747.]

Order'd that Rd Stallinges Clk. of the Vestry go to Mr. John Skinner & know if he will undertake the Tarring and find the tarr and workman to Tarr ye Roof and weather boards of the Church and to know his Lowest price and when he Can haue it done.

[Apr. 11, 1748.]

Order'd that the Vestry Clk: draws orders on Mr. Daniel Rawlings Sher. to pay unto Michall Askew Sexton 1000lb Tob and to Richard Stallinges Vestry Clk 1000 Do

Order'd that the Clk: Sett up Advertisements to give notice that the vestry will Dispose off 7000 and odd pounds of Tobacco in the Sherrs hands for Curt money to the highest Bidder at All Sts Parish Church on the first tuesday in June next,

[Mar. 6, 1749.]

Order'd that the Absent Gent. of the Vestry appear at the next Vestry to Show Cause why they did not attend at this Vestry and that the Clk of the Vestry giue notice to them.

[Apr. 16, 1750.]

Then the Vestry Chose Messrs Samll Austin and Samll Robertson for Inspectors in the Room of Mr. Wm Miller Junr Deceased to be transmitted to his Excellency with all Convenient Speed. . . . . .

Mr. Wm Hickman Discharg'd from being a Vestryman on acct of being an Inspector.

[Nov. 5, 1751.]

Orderd That ye Clerk Give Notice to Mr. John Skinner Sherriff to Give an Accot of ye Insolvences by Name, and also the Dividend of the Vestry's part of Tobacco.

ADDENDA.

[1]

Sir:

I should be much obliged to you if you would please to call at M. Andrews before you leave Town this afternoon as a young man & young [woman] are there waiting for you in great Need of your Assistance

I am Sir

Sunday Your most Obt
April 28, 65 * * * *

[2]

Revd Sir/

Your & Mistrs Deans Company is Desired at the funeral of Doctor Josias Midlemore next thursday being the 20th Instant. It is to hold at St Georges Church.

If you will be So good as to give notice to Your Congregation that those who are Inclined to Come may know the day & that there will be a Sermon will very much oblige Your's

by order from Mistis Andrw Lendrum
Midlemore

Saturday 15th 1755.

[3]

To the Gentlemen of the Vestrey of All Sts Parish.

This is to Certifie you That I Assign ouer all my Right and Title of my part of the pew No 6, which is in partnership with William Wood, unto Thomas Haruey of Sd Parish and his Heirs for Euer, and pray that the same may be Recorded in the Records of All Sts Parish, I hauing receiued full Satisfaction for the Same as Witness my hand this 9th day of May 1720

Testes Robert Sumnar.
Rich. Stallinges.

[4]

This Indenture made this Eleventh day of October In the Year of Our Lord One thousand Seven hundred and Sixty four Between John Clagett of Frederick County and Province of Maryland of the one part Gentleman And The Reverend Mr Alexander Williamson Rector of Prince Georges Parish in the County and Province aforesaid of the other part Witnesseth That the said John Clagett being sensible, how much necessity there is for having a Publick Schooll in the Parish aforesaid, for the

Instruction of Youth; and one Corner of his Land having been deemed Convenient for Erecting the said house upon: He therefore out of Sentiments of Tenderness and Regard for the rising Generation, Hath, given granted aliened Infeoffed and confirmed and by these presents doth freely and clearly give grant alien Infeoff and confirm unto the said Mr Alexander Williamson and his Successors for the use of a Publick School for ever All that part of a Tract of Land being part of a Tract of Land called Clagetts purchase lying in the Parish and County aforesaid . . . . .

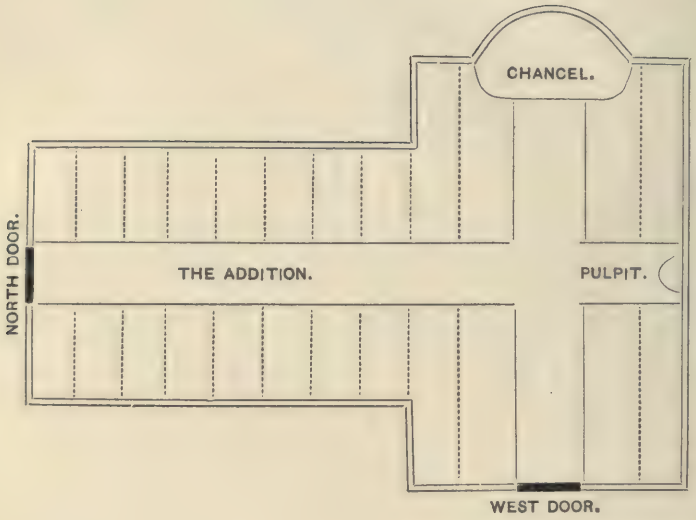
Signed Sealed and Delivered John Clagett.
in the Presence of
Chas Jones
Andrew Heigh.

[5]

Maryland ss.

In the name of God Amen I Bevill Granville Rector of the parish of William & Mary in charles County in the province aforesaid do by these presents resign and give up to the Right Honorable the Lord Proprietary all my right title & interest in the said living of William & Mary in the County aforesaid & to all perquisites benefits & advantages thereto belonging. Witness my hand this 25 day of January 1732

Witness. Bevill Granville



GROUND PLAN

OF THE

OLD PARISH CHURCH

OF

ST. PAUL'S, KENT ISLAND.

From the Rev. Dr. Allen's Manuscript History.

VII

OLD MARYLAND MANORS

"Keep leets and law-days and in sessions sit."—*Othello.*

"You would present her at the leet because she brought stone jugs and no sealed quarts."—*Taming of the Shrew.*

"I know my remedy; I must go fetch the third borough" [Tithingman].—*Taming of the Shrew.*

"A Tything-man in each Manor, a Constable in each Hundred."—*Bacon, Laws of Maryland*, 1638.

"Proces in Court Baron est Summons, Attachement & Disnes, que est proces al commō Ley."—*Le Court Leete et Court Baron, John Kitchin. London*, 1623.

"And By-laws for the common weale may be made in a Leet."—*Antiquity, Authority, and Uses of Leets, Robert Powell. London*, 1641.

"We also, by these Presents do give and grant licence to the same Baron of Baltimore and to his heirs, to erect any parcels of land within the Province aforesaid into manors, and in every of those manors to have and hold a Court Baron . . . . and view of Frank-Pledge, for the conservation of the peace and better government of those parts."—*Charter of Maryland, Art.* 19.

"And We do . . . . authorize you that every two thousand acres . . . . so to be passed . . . . be erected and created into a mannor. . . . . And we do hereby further authorize you that you cause to be granted unto every of the said Adventurers within every of their said manors respectively, ... a Court Barron and Court Leet, to be from time to time held . . . ."—*Instructions from Lord Baltimore to Governor Calvert*, 1636.

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE
HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

VII

OLD MARYLAND MANORS

With the Records of a Court Leet and a Court Baron

BY JOHN JOHNSON, A. B.

BALTIMORE
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OLD MARYLAND MANORS.

A striking contrast between the North and the South is presented by the small landholdings of the former and the great estates of the latter. Tracts of thousands of acres were not at all uncommon in colonial Maryland, and sometimes land-grants included even tens of thousands. These great estates had a strong shaping influence on the life of early Maryland. Separating their owners by wide intervals, they prevented that association of interests and feelings that was strong in the towns of the northern colonies. The man who lived in the centre of a tract of ten thousand acres must necessarily have been thrown largely upon his own resources for amusement and for culture. The coöperation which makes schools and libraries of easy attainment in a thickly settled community was absent among such people. Consequently education could be obtained only at great cost and inconvenience. The planter who was determined to have his children well taught had to send them abroad, as was done in the case of Charles Carroll of Carrollton.

There were some towns founded in Maryland, it is true, in the earliest days. The vanished city of St. Mary's, the lost Joppa, and others that have disappeared as completely as the "cities of the plain," furnished a stimulus to civilization in some parts of the colony. But in spite of these instances, it is true that most of the life of Maryland in the latter half of the seventeenth and the whole of the eighteenth century, was country life. And it was a country life that presented many analogies to the country life of Englishmen during the same period.

The first generation of Maryland planters led that sort of hand-to-mouth, happy-go-lucky existence that marked the beginning of all the colonies. Until means became adapted to ends, but little comfort and still less culture, were to be found. Many of the earliest settlers of high consideration made their cross-mark on titles, deeds and conveyances. Their ignorance, however, was the knowledge of the class from which the best born of them sprang—the English country gentry of the seventeenth century.

The share of Maryland planters in the conveniences of life does not appear to have been large at first, though even then they made an attempt at good living. In the inventory accompanying the will of Governor Leonard Calvert, the item of a silver sack-cup follows that of two pairs of socks. Sack probably occupied far more personal attention than did wearing apparel. Indeed, one of our historians ventures the statement that this potent liquor is oftener mentioned in the records of Maryland than in the pages of Shakespeare. Beds in the early days were lamentably lacking. Travellers either deprived the host of his, or slept upon deer skins or fodder piled upon the floor. All the appointments of a household were necessarily meagre.

But after this early period had passed and Marylanders had learned for good and all of what their soil and their climate were capable, a settled order of things began, which continued into the present century. The life of the Maryland planter of this second period was such as left few traces in the written accounts that have come down to us. In the few letters and journals of the colonial epoch—few, because so rarely the colonists had the knowledge, and more rarely still the taste to write either letters or journals—in these few are to be found historical suggestions. Of the famous estates of the colonial era, a small number are still in the hands of the descendants of colonial families. An idea of the former condition of things can be obtained by visiting these localities. There are still found the ancient houses, the chapels, the out-buildings, that

have remained from colonial times. There, more clearly than elsewhere, we may see the vestiges of the old aristocratic spirit which has almost disappeared under the democratic attrition of more than a century. These traces will not last much longer, and if any record of this old system is to be kept, it should be made at once.

The Calverts desired to found in Maryland a new landed aristocracy. Though the "Bill for Baronies" never passed the Assembly, the Proprietor was able to establish manors, and to give to the manorial lords rights of jurisdiction over their tenants. The lord of the manor thus became a person of prime importance. While his wealth as a large landholder gave him one element of consideration, his judicial dignity gave him another.

The reason the settlers consented to the introduction of this system is not hard to find. Our Maryland ancestors, following the example of certain great proprietors, proposed to live in scattered, rural ways, on large estates. The manorial system, which had been used for a like purpose in the old country, lay ready to their hands and they adopted it. Similarly, the men of New England, proposing to live in close communities, adopted the township system. Once taken up, the manorial system became general, so that English manors, English halls, English lords of the manor were scattered all over our State.

In accordance with his charter right,* the Proprietary, in 1636, issued instructions that every two thousand acres given to any adventurer should be erected into a manor, with "a Court Barron and a Court Leet, to be from time to time held within every such mannor respectively." † These instructions were repeated many times, and the records are filled with such grants. Capt. George Evelin, Lord of the Manor of Evelinton, in St. Mary's county; Marmaduke Tilden, Lord

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* See Charter of Maryland, Art. 19.

† Kilty, p. 31. *Conditions of Plantation*, 1636.

of Great Oak Manor, and Major James Ringgold, Lord of the Manor on Eastern Neck, both in Kent; Giles Brent, Lord of Kent Fort, on Kent Island; George Talbot, of Susquehanna Manor, in Cecil county; these are a few names picked at random. In the Library of the Maryland Historical Society is to be found a conveyance dated 1734 for a parcel of land to be held "as of the Manor of Nanticoke." In the same collection are preserved the rent-roll of Queen Anne's Manor, and a statement of the sale, in 1767, of twenty-seven manors, embracing one hundred thousand acres. In 1776, there were still unsold seventy thousand acres of proprietary manors lying in nine counties.* In the Maryland Reports † is to be found a notable lawsuit over Anne Arundel Manor. The Proprietor, Lord Frederick Calvert, sought by means of a common recovery to break the entail upon the manor, and thus prevent its passing into the hands of a natural son of the former Proprietor.

At the present day we find many estates called manors. Those that have attracted most notice are My Lady's Manor and Bohemia Manor. At the beautiful and historic seat of the Hon. John Lee Carroll, Doughoregan Manor, the name, the mansion, the chapel, the grounds, all still show surviving evidences of the original state of affairs. But it is with the social side of this system that we are here concerned. Its civic aspect will be treated in a subsequent part of this paper. It is, however, rather the patriarchal than the feudal type of society that is presented at the period we have materials for describing. It is not easy to picture the combined elegance and simplicity of those old homesteads—the appearance they presented of aristocratic state mingled with republican good-fellowship. The entrance to the place was, perhaps, through a wood of old oaks and chestnuts, that had passed their sapling growth a century before George Calvert, first Baron of Balti-

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* Scharf II., p. 104.

† 2 Harris & McHenry, p. 279.

more, appeared as a stripling in the English Court. Emerging from the wood, the road was lined with a double colonnade of locusts or beeches with footpaths between. Nearing the mansion, pines and firs replaced the deciduous trees, and the evergreen branches formed a symbol of the ever fresh hospitality awaiting the approaching guest.

Before the door stood the old elms, planted by the founder of the family, and the lawn was terraced in the English style. The turf—a peculiar pride of the master of the house—was so thick and close that it would be hard to find a finger's breadth of earth without its blade of grass. Conifers stood at intervals over the half dozen acres forming the lawn, and at either end of a terrace a catalpa with a trunk of Californian proportions shaded a rustic seat.

The house itself was in most cases a long, low structure of brick. The finest residences were remarkable for their large size and striking appearance.* The rooms of the old houses were grouped about a large hall-way in which some of the family usually sat. The walls everywhere were wainscotted to the ceiling. Sometimes the woodwork was finely carved and of rare material. Upon the walls hung the portraits of the ancestors of the family, often as far back as six or seven generations. A side-board in the dining-room displayed a portion of the plate, bearing the family crest. Flanking the plate stood a great array of glasses and decanters. For in the early days the proper discharge of the sacred duty of hospitality involved various strong potations. Even now the visitor to the Maryland country house is almost always invited to take something to drink on entering or leaving the dwelling.

Various offices stood around the mansion. Notable among them was the stone smoke-house. The quarters of mast-fed hogs hung from the roof, and the fires in the pit below were tended by superannuated negroes, their faces greasy with lard and begrimed with soot beyond their natural blackness.

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* Eddis's Letters.

In some places the family chapel stood close by the house. On one side of the main aisle sat the slaves, on the other the free white tenants; and no considerations of comfort could induce the freemen to cross the interval that served as a boundary between them and the despised race. Beneath the brick floor of the chapel and marked by a marble slab, were the graves of dead members of the family of the lord of the manor. Any one attaining special distinction was buried by the side of the chancel and, within the chancel rails, let into the wall was a tablet to his memory. If the family belonged to the ancient church, frescoes and oil paintings, occasionally copies of considerable beauty, adorned the place.

The mode of burial curiously illustrated the prevalent feeling of class distinction, and at the same time preserved an ancient custom of the mother country. While the lord's family lay buried beneath the floor in the chapel, the tenants' graves were at a distance hidden among the trees. At some of these graves stood a neat slab of stone with a pious inscription. Still farther removed, with only a board as a memorial of each, were the graves of the slaves. Not even death could unite what God had put asunder.

At a considerable distance from the great house was the dwelling of the overseer. Around him in numbers sufficient to people a small town, lived the negroes whose labor produced the wheat and tobacco upon which the fabric of society rested. Out of the number of these dependents a few of the likeliest went to the mansion as domestic servants.

Scattered at intervals over the estate, wherever their farms lay, were the houses of the free white tenants. The tenant farms were frequently several hundred acres in extent, and were held on leases of twenty-one years. The rent was low and was usually paid in kind, not in money. The system had some of the evils incident to English land tenure of the present day, and has now given way to short leases, or has disappeared entirely by the breaking up of the estates on which it was practised.

In various ways on these estates the traditional sports of the mother country were kept up. One of the patriarchs of colonial Maryland, when importuned by his relatives to break the entail upon his estate, replied: "If one of you inherit the whole, I shall be responsible for the production of one fox-hunter. If I divide it, I shall make as many fox-hunters as I make heirs." Fox-hunting was a pursuit in which Marylanders delighted. In no characteristic is the Englishry of the settlers (to use Mr. Freeman's term) more clearly shown than in this. On horses that seemed almost tireless, and with dogs like the horses, they sometimes chased Reynard across the eastern peninsula, from the Chesapeake to the Atlantic. The return journey and the stops at hospitable mansions on the way took more time than the pursuit of the fox, and the whole expedition sometimes lasted a week.

Aside from the social aspect of these old estates, they are also worthy of notice from a civic point of view. The history of Maryland owes its interest not so much to striking events as to the continuity of old English institutions and ancient habits of local self-government. When the early colonists came to Maryland they invented no administrative or judicial methods. The old institutions of England were transplanted to Maryland and acclimatized. In the new soil they were modified and destroyed, or they were modified and perpetuated. But in either case there is perfect continuity between the institutions of colonial Maryland and those of the older country. For our new institutions, like new species, were not created; they grew from the old. Lord Baltimore modeled his colony after the Palatinate of Durham, and the details of local administration were what they had been at home. Old methods were adapted to new conditions.

The manor was the land on which the lord and his tenants lived, and bound up with the land were also the rights of government which the lord possessed over the tenants, and they over one another. For the ownership of the manorial estate carried with it the right to hold two courts, in which

disputes could be decided and tenant titles established and recorded; and in which, also, residents on the estate exercised a limited legislative power. These manorial jurisdictions have descended from a time previous to the accession of Edward the Confessor, and their reproduction and continuance in Maryland form a striking instance of the permanence of ancient English customs.

A tradition has come down in Maryland that these courts were held occasionally by members of the Proprietary family owning manors.* In a court baron, held on St. Gabriel's Manor, in 1649, the steward gave a tenant seizin by the rod, each party, according to ancient custom, retaining as evidence of the transfer a part of a twig broken in the ceremony.† In the library of the Maryland Historical Society are preserved the records of a court baron and a court leet of St. Clement's Manor, in St. Mary's county, held at intervals between 1659 and 1672.‡ We can hardly believe that these records are the only ones of their kind that were kept in the Province. For a single one that has been preserved there must have been many lost. When we consider that so many documents belonging to the government of the colony, and for whose preservation great precautions were once taken, have nevertheless been destroyed, it will appear but natural that papers left entirely in private hands, and of but little value or interest to their possessors, should have entirely disappeared. Moreover, as will presently be shown in detail, the profits of the manorial courts were not inconsiderable. Consequently, they would not soon be relinquished. Nor is it likely, where every owner of two thousand acres could obtain these rights of jurisdiction, that only two persons in the whole Province

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* Kilty, p. 93.

† Bozman, vol. 2, note, p. 372. The same old English custom obtained in early New England.

‡ See Appendix for a copy of these records, furnished by the kindness of the Librarian of the Maryland Historical Society, J. W. M. Lee.

would exercise them. It seems probable that in the early period of the existence of the colony manorial courts were not uncommon.

The popular court of the manor was the court leet or court of the people. When the grant of the leet included the view of frankpledge, as in the Maryland manors, that ceremony took place at the leet, though in the records no mention of the view is made. At the opening of the leet, the steward, who was the judge, having taken his place, the bailiff made proclamation with three "Oyez," and commanded all to draw near and answer to their names upon "pain and perill." Then followed the empanelling of a jury from the assembled residents on the manor, all of whom between the ages of twelve years and sixty were required to be present. The duties of a leet jury seem to have been those of both grand and petty juries. All felonies and lesser offenses were enquirable. The statute, 18 Edw. II., names the following persons as proper to be investigated at a leet:

"Such as have double measure and buy by the great and sell by the less. . . . Such as haunt taverns and no man knoweth whereon they do live. . . . Such as sleep by day and watch by night, and fare well and have nothing,—" a set that need watching. The leet had also a general supervision of trade, fixed the price of bread and ale,* and set its hands on butchers that sold "corrupt victual." The game laws also were enforced by the leet. At the leet held at St. Clement's, in St. Mary's county, Robert Cooper was fined for fowling without license on St. Clement's Island. The notion that hunting was for the rich alone showed itself in another way. Of the chase or park of the English manors, some traces may be found in Maryland. A writer in "A Description of the Province of New Albion," which adjoined Maryland on the east, speaks of "storing his Parks with Elks and fallow Deer," probably following a Maryland example. On the Bohemia

*See Appendix for instances.

Manor, the remains of the walls of a deer park were pointed out as late as 1859.* That any necessity existed for a park is not to be believed. Venison was so common a food that Hammond, in *Leah and Rachel*, says "that venison is accounted a tiresome meat." An aping of aristocratic manners may, perhaps, have induced some of the settlers to enclose a wood for a park, but nothing else could have done so.

Another important function of the court leet, was the levying of a deodand or fine upon the cause of any accident to life or limb. A reckless driver running over a child or a careless woodman felling a tree and killing a passer-by, was mulcted by the jury of the leet. Before the period of Maryland manors, the cart or the tree causing the injury became the property of the lord, the idea being that he would expend its value in masses for the soul of the deceased. In this is probably to be found the origin of the name given to the payment, deodand.† In actual fact, however, the soul of the departed was not of sufficient importance in the eyes of most lords to compel the loss of a piece of property so easily acquired as the forfeited article.

The leet could enact by-laws regulating the intercourse of residents with each other, and the regulations had all the force of a town ordinance. In the leet also constables, ale-tasters, affeerors and bailiffs were elected; and interference with the exercise of their duties, as breaking into the pound, taking away impounded cattle, or resisting distraint for rent was punishable by the leet.‡ The fines imposed went to the lord

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* Scharf, vol. 1, p. 430.

† See interesting remarks on this topic in lectures on the Common Law by Oliver Wendell Holmes, Jr.

‡ Manorial courts are still held in some parts of Great Britain. In *Notes and Queries*, October 21, 1882, it is stated that on October 3, 1882, a court leet for the manors of Williton Regis, Williton Hadley and West Fulford was held. Appointments of inspectors of weights and measures, of bailiff, and of hayward were made. The leet for the town of Watchit was held also, and appointed a port-reeve, ale-tasters, a crier, a stock driver and an inspector. Leets were also held the same month on the estates of the Duke of Buccleugh. (N. & Q., November 4, 1882.)

and were often profitable. Besides fines, other punishments were used. In 1670 the jury of St. Clement's leet ordered the erection of "a pair of Stocks, pillory and Ducking Stoole."*

The presence of irresponsible strangers seems to have been peculiarly distasteful to our ancestors. By a law of Edward the Confessor, a man was forbidden to entertain a stranger above two nights unless he would hold his guest to right. So the constable on the manor anciently took security of all heads of families for the keeping of the peace by strangers in their houses. Curiously enough, the leet at St. Clement's presented John Mansell for "entertayning Benjamin Hamon & Cybil, his wife, Inmates," and ordered him "to remove his inmates or give security;" a proceeding that would have been in perfect keeping a thousand years ago.

The Maryland county justices were required to appoint constables in every hundred, who swore on taking office to "levy hue and cry and cause" refractory criminals to be taken.† The hue and cry carries us back to remote Anglo-Saxon times, when all the population went to hunt the thief. The duties of the manorial constable were doubtless the same in the manor as those of the constables of the hundred in their districts.

The affeerors, mentioned above, were sworn officers chosen from the residents. Their duty was to revise the fines imposed by the leet jury, and to temper justice with mercy. They are mentioned several times in the records of St. Clement's, in one case reducing to two hundred pounds an amercement of two thousand pounds of tobacco imposed on a certain Gardiner, who had taken wild hogs belonging to the lord.‡

The Maryland Indians were very early reduced to a dependent condition, and it became the duty of the leet to include

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* See Appendix.

† Parks, Laws of Maryland 1708, p. 99.

‡ See Appendix.

them in its police jurisdiction.* There is an account in the St. Clement records of the fining of two Indian boys for some thievish pranks. Moreover, "the King of Chaptico" himself is presented for stealing a sow and her pigs and having "raised a stock of them." This was apparently too weighty a matter for the simple jury of the tenants, so it was referred to "ye hon^{ble}, ye Gov^{r}.." The matter of losing hogs seems to have been a great grievance for the tenants, and the jury accordingly reported that they "conceive that Indians ought not to keepe hoggs, for under pretence of them they may destroy all ye hoggs belonging to the man^{r}, and therefore they ought to be warned now to destroy them, else to be fyned att the next court." The conquered Britons were treated in a spirit almost as liberal.

The elasticity of an old institution like the leet in being thus adapted to the government of savages is worthy of note. It is a striking illustration, also, of the principle that impels men to adapt old forms to new conditions, and it deserves to be placed by the side of the institution of tithing men among the Indians of Plymouth.† Doubtless other methods of police and government for the Indians were adopted in various places by the colonists, and curious survivals of old forms like the above might be noted by the investigator.

In the court baron of the freeholders the freehold tenants acted as both jury and judges. A freeholder could be tried only before his peers. So that if the freeholders fell below two in number the court could no longer be held. Before this court were brought points in dispute between the lord and his tenants as to rents, forfeitures, escheats, trespass and the like. Besides these matters, actions of debt between tenants and transfers of land took place in the court baron. Here, also, the tenant did fealty for his land, swearing,‡

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* See Appendix.

† "Studies," IV. Saxon Tithingmen in America, p. 10.

‡ Gurdon, p. 615. See Appendix for instances of swearing fealty.

"Hear you, my lord, that I, A. B., shall be to you both true and faithful, and shall owe my Fidelity to you for the Land I hold of you, and lawfully shall do and perform such Customs and Services as my Duty is to you, at the terms assigned, so help me God and all his saints."*

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*The origin of manorial courts is very obscure and goes back to an early period. Among the Anglo-Saxons, as early, perhaps, as the eighth century, conquest, purchase, grant and commendation had given rise to great estates. By this means all the arable land in some neighborhoods became the property of a wealthy lord. Consequently, the hitherto independent village community of owners of arable land became a dependent community of tenants. At the same time hunting, fishing, pasture, wood cutting, all the rights to the use of common wild land, rights that had formerly run with the ownership of a share of arable land, became rights of the lord, to be exercised and enjoyed by the tenant only by the sufferance of the lord. Thus, it appears, originated the title of the lord to the waste and to the game inhabiting it.

Contemporaneously with these agrarian changes went on as great a judicial change. Among the Anglo-Saxons jurisdiction belonged to the state, not to the king. But jurisdiction and the profits of jurisdiction were separate. While justice was a public trust, the profits of justice were merely a source of royal revenue. So it came about, as early as the ninth century, that the fines of the hundred courts, fines for which every offence might be commuted, were often granted by the king to any neighboring magnate. This grant of profits was very different from a grant of jurisdiction. The date at which private jurisdiction originated is unknown. The earliest grants of it date from the reign of Edward the Confessor, but private courts existed before his time. Though he and his Norman advisers were the first to regard jurisdiction as royal property, to be granted away, a revolution had already taken place in the customs of the people, who had abandoned the ancient judicial system, for the loose administration of the popular courts no longer satisfied the needs of an advancing civilization.

So clumsy and slow was the machinery of the hundred court that suits were almost always compromised. A favorite method of settlement was arbitration. The most natural arbitrator between tenants was the lord, and only a contract between the parties was needed to give him the powers of the hundred court. While the lord's decision was binding in law only as the result of a contract, yet his private authority among his tenants was great enough to enforce the settlement. Here, then, seems to be an origin, and a Saxon origin, for the jurisdiction of a manorial lord.

Some of the feudal incidents of the manorial tenure may be found mentioned in the records of the Maryland Land Office. Here is an example quoted in the *Land-holder's Assistant:* * "Whereas certain lands and tenements holding of the manors hereunder named have ceased for these three years last past to pay the rent due.... These are therefore to summon the said several tenants to pay the said rent and arrears and charges of this process unto the lord of the manor .... or else to be at the court .... to show cause why the said land should not

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So much for the origin of private jurisdiction in general. An explanation of the specific origin of the three courts, the leet, the common law court baron and the customary court baron, brings us to a controversy. Professor Stubbs, on the authority of Ordericus, derives the courts of the manor from the tun-gemot. (Hist. I., p. 399.) Henry Adams denies the existence of the tun-gemot (Essays in A. S. Law, p. 22), and derives both the court baron and the court leet from the hundred court. As to the customary court he is silent. Professor W. F. Allen has still a third view, the court baron, according to him, being of feudal origin, and not being found earlier than the end of the eleventh century. He makes the non-existent tun-gemot of Professor Adams the germ of the customary court. All these views are so ably supported that it would be highly desirable to reconcile them, though it is probably impossible.

Adams appears to have proved that all manorial jurisdiction was originally obtained by the lord's assuming the powers of the hundred court. This may have been done by prescription, the tenants agreeing, or perhaps by actual royal grant of jurisdiction following on grants of profits.

But Allen's conclusions have a direct bearing here. He maintains, with great force, that the freeholders, the suitors and judges of the court baron, took their rise in the feudal period. No freeholders, in our sense, are to be found, he says, earlier than the end of the twelfth century. He thinks that in the interval between Domesday and this period, certain of the members of the class of villeins were advanced to the dignity of freeholders, while all the other original holders lost their earlier rights and fell into copyhold tenure. The court baron was established on a French model for the use of these promoted tenants. The Saxon manorial court, which Allen derives from the court of the township, and Adams from the hundred court, became the customary court of the copyholders. As they had fallen in status, so did it, and all important business of the estate was transacted in the court baron or the court leet. (See Allen's *Origin of Freeholders* in Proceedings of the Wisconsin Academy.)

* Kilty, p. 103.

escheat to the Lord of the Manor. . . . In the Manor of St. Michaels: One tenement of 100 acres . . . . yearly rent 2 barrels of corn and 2 capons—arrear, 3 years. . . ." In the manors of St. Gabriel and Trinity like claims were made. These are apparently the only instances on record of claims to escheats by manor lords. "At a court held at St. Mairies, 7th December, 1648, came Mrs. Margaret Brent and required the opinion of the court concerning . . . the tenements appertaining to the rebels within his Manors, whether or no their forfeitures belonged to the Lord of the Manors. The resolution of the court was that the said forfeitures did of right belong to the Lord of the Manors by virtue of his Lordship's Conditions of Plantation. . . ."* While this interests us as the record of a feudal forfeiture in Maryland, it has an added attraction, due to the fact that this is probably the first mention of a female attorney. Another fact showing how the manorial tenure entered into the life of the people, is a decision of the Maryland Court of Appeals, made as late as 1835. In this case† it was held that a tenant on a manor was entitled on giving up his lease to the benefit of those manorial customs that were commonly recognized as good by the tenants, and that had been observed by the tenants during an indefinite time.

The manorial grants were originally used to promote emigration to the colony. To this purpose was soon added another, namely, that of military defence. It seems to have been the desire of the Proprietor to introduce a body of cultivators that could at any time be turned into militia. Accordingly, in 1641, he issued the following "Conditions of Plantation:" "Whatsoever person . . . . shall be at the charge to transport into the Province . . . . any number of able men . . . . provided and furnished with arms and ammunition according to a particular hereunder exprest . . . , shall be

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* Quoted by Kilty, p. 104.

† Dorsey *vs.* Eagle, 7 Gill and Johnson, 321.

granted unto every such adventurer for every twenty persons he shall so transport . . . . two thousand acres . . . . which said land shall be erected into a Mannor . . . . with all such Royalties and Privileges as are usually belonging to Mannors in England. . . .

"A particular of such arms and ammunition . . . . for every man . . . . which shall be transported thither.

"*Imprimis*—One Musket or Bastard-Musket with a snaphance Lock.

"*Item*—Ten pound of Powder.

"*Item*—Fourty pound of lead—Bulletts, Pistoll and Goose Shot, each sort some.

"*Item*—One Sword and Belt.

"*Item*—One Bandelier and Flask."

Such legislation bears an analogy to the Assize of Arms, under Henry I., and to parts of the Statute of Winchester, under Edward I. The idea of military defence by the mass of the people is common to these instances of English legislation of the middle ages, and to this regulation of the Maryland Proprietary of the seventeenth century.

In addition to these grants to private persons, manors were given to the Church. Newtown Manor, formerly an estate of the Proprietary, is to this day in the hands of the Jesuits. In Charles and St. Mary's counties, large estates, still bearing the title of manors, are at present owned by that society. All efforts have been unavailing to obtain access to any documents relating to these lands. If search were permitted in the archives of the order, much interesting material might be discovered.

It should not be thought that the aristocratic character of the manor was injurious to the growth of liberal ideas. The manor was a self-governing community. The manor officers were elected by the tenants, and juries were drawn from among the same body. By-laws for their own government were adopted by most voices. So there was ample scope for individuality to show itself. The extinction of the manorial

system was probably not due to any democratic feeling of opposition to it as a relic of feudalism, but to another cause. The early introduction of slavery must soon have made it more profitable for the lord to cultivate all his estate than to rent it to tenants, unless the estate were of immense size. The very large estates, however, were quickly sub-divided when population increased. Consequently, the relations which made a manor possible soon ceased to exist. At the same time the necessity for a system of private jurisdiction passed away. The manorial courts were adapted to a state of society in which law-abiding men lived far apart, and surrounded by unquiet neighbors; a society in which bloodshed was frequent and property insecure. In such circumstances it was needful to have in each community a person uniting in himself the influence of wealth and the majesty of law. When higher civilization made violence rare, and when better means of communication made it easy to reach the public courts, private authority was no longer needed. The feudal society of the manor reverted to the patriarchal society of the plantation. Serfs or slaves now replaced the free tenants of former times. The rights of these *villeins en gros* were entirely at the will of the owner of the estate. Controversies between them never reached the dignity of legal adjudication. Between them and their owners controversy was in the nature of things impossible. Here there was no scope for manorial courts. Controversies between master and master went, as before, to a public tribunal. The court baron and the court leet, having served their turn, were cast aside. If they played no great part in the history of the State, they are interesting as an extinct species, an institutional fossil, connecting the life of the present with the life of the past.

EDITORIAL NOTES.

The historical significance of the St. Clement records is that they prove incontestably the existence of a Court Leet in Maryland. These Records are the first of their kind that have been utilized by students of Maryland History. McMahon does not appear to have noticed any such Records. Bozman, in his History of Maryland, vol. ii, 39, says, "although the power and right of holding courts-baron and courts-leet might have been inserted in some or all of those grants of manors, yet we are told from *good authority*, that no memorial appears on the records of the province, of any practical use of either of those kinds of courts." Scharf, i, 123, quotes this passage as final.* The "good authority" upon whom Bozman relied was Kilty, who, in his Land-Holder's Assistant, 93, says, "no memorial appears on record" of the practical use of the privileges of Court Baron and Court Leet in those "inferior Manors" erected by the Conditions of Plantation, issued in 1636. But Kilty, as quoted by Bozman in the above passage, was not speaking of all manors, but only of those which assumed the name. Upon the very same page, 93, Kilty states that in some manors, namely, in those erected by special order of the Proprietary, "and more especially in those held by the Proprietary in his own name, it is understood that the privileges attached to them were actually exercised." But even Kilty mentions no concrete examples or existing records, of a Court Baron and a Court Leet.

Bozman, however, after having unfortunately quoted Kilty in such a partial way as to lead to the now current notion that there never was any case of Court Leet in Maryland, appears to have come upon certain indications of the existence of such an institution. He says in a foot note to page 39, "But I find in the Council Proceedings from 1636 to 1657, p. 23, a commission there recorded, for holding a court-leet in the isle of Kent directed 'to Robert Philpot, William Cox, Thomas Allen, of the isle of Kent, gentlemen, to be justices of the peace within the said island, to hold a court-leet in all civil actions not exceeding 1200 lbs. tobacco; and to hear and determine all offences criminal, within the said island, which may be determined by any justice of the peace in England, not extending to the loss of life or member. Given at St. Mary's, February 9th, 1637. Witness, Leonard Calvert.' As proceedings," continues Bozman, "most probably took place under this commission, there must, of consequence, have been some written memorials of those proceedings

* The existence of manorial courts in Maryland is, however, recognized by Scharf in a later volume, ii, 50.

once existing, though probably now lost. As the business of Courts-leet in England has long ago been gradually absorbed by the courts of quarter sessions for the shire or county, so with us, it is probable, that if any courts-leet or courts-baron were ever held in the province, the county-courts, at a very early period, swallowed up their jurisdictions. To trace these transfers of judicial power, would at this day be unnecessary, if it were a possible task, except it be to throw some light on the history of those times."

If a Court Leet was actually instituted upon Kent Island, then it was probably one of the oldest authorized local courts in Maryland, for the first county court in this province was not opened until about the middle of February, 1638, judicial power having been hitherto retained by the governor and his council and the General Assembly of Freemen, or the Colonial Parliament. Authority, however, to hold a local court in Kent Island had been granted to Captain George Evelyn on the 30th of December, 1637. He was authorized "to elect and choose six of the inhabitants of Kent for his council,"—a local court of *seven men*. Bozman states in his Notes and Illustrations, 580, that the Court Leet, that was authorized the following year but soon superceded by the "Commander" [High Constable, cf. Bozman, ii, 138] of Kent, was more like a county court than a manorial court. "The court held under the commission before stated [Bozman, ii, 39] 'to certain justices of the peace on the isle of Kent to hold a court leet' there, seems to have partaken more of the nature of what was subsequently called a county court, than a court pertaining to a manor; and 'the manor of Kent fort,' the only manor ever erected on the isle of Kent, was not then granted." The conclusion, then, is by Bozman, as regards the Kent Island case, that it was no Court Leet at all, in the technical sense of the term.

But Bozman thereupon, in his Notes and Illustrations, ii, 581, begins to approach the real truth touching the actual existence of manorial courts, a truth which Mr. John Johnson has only elucidated in its fulness in the foregoing monograph. "However, it does appear," says Mr. Bozman, "that at subsequent periods of time, one or two rare instances occurred of the holding both courts baron and courts leet in two distinct manors. 'A court baron was held at the manor of St. Gabriel, on the 7th of March, 1656, by the steward of the lady of the manor, when one Martin Kirke took of the lady of the manor in full court, by delivery of the said steward, by the rod, according to the custom of the said manor, one messuage, having done fealty to the lady, was thereby admitted tenant' (MS. Extracts from the records). "This," continues Bozman, "seems to have been conformable to the ancient practice of courts baron in England, on the admission of any tenant of a manor. The steward thereof, taking hold of one end of a rod and the tenant of the other, the former repeats to him: 'The lord of this manor by me his steward doth deliver you seisin by the rod, and admit you tenant to the premises,' &c. (See the Practice of Courts Leet

and Courts Baron, by Chief Justice Scroggs)." Here, then, is instanced by Bozman himself a concrete case of a manorial court, the records of which Mr. Bozman appears to have seen.

But now follows mention of a Court Leet upon the identical manor, the records of which Mr. Bozman had not seen but which are now first published. Bozman came upon the traces of manorial courts at St. Clement's, not from local records, but from public records. He says, ii, 581: "Also, in October, 1661, Thomas Gerrard petitioned to the provincial court, stating, that at a court leet and court baron, held for the manor of St. Clement's, on the 27th of October, 1659, Robert Cole was fined, for marking one of the Lord of the manor's hogs, and prayed to have satisfaction for the unlawful marking and killing such hog, as the laws of the province provided.' * The grant of this manor, which lay in St. Mary's county, was made to Thomas Gerrard in the year 1639, and appears to be one of the oldest grants of a manor now extant on the records of the province. It contained a clause of power to Thomas Gerrard to hold a court baron and court leet. The last mentioned case, which occurred in this manor, seems to have been one of those petty misdemeanors, which would have been properly cognizable by a court leet in England; but, as the lord of a manor could not judge in his own case, for a trespass to himself (See 2 Bacon's Abridgement, 505), this principle probably occasions his application, as above, to the provincial court."

The local Records of the Manor of St. Clement's, herewith published, indicate that a Court Leet was there held for at least a considerable period, namely from 1659 to 1672. The Records are defective and may originally have covered a much longer time. The manuscript is well preserved, what there is of it, and is written in the quaint old English hand, characteristic of English clerks of the seventeenth century wherever found, whether among the Pilgrim Fathers or among the Pilgrims of St. Mary's. The manuscript was presented to the Maryland Historical Society many years ago by a Catholic gentleman, Colonel B. U. Campbell, who died April 28, 1855, aged sixty, and who was buried with great honors, after a celebration of High Mass in the Cathedral, in the presence of the Archbishop and "all the Roman Catholic clergy" (See contemporary newspaper accounts, *e. g. The American*, May 1, 1855). Colonel Campbell was a partner in the Baltimore branch of the well known English bankers, Brown and Company of London, and he is spoken of in the resolutions of the Maryland Historical Society, May 3, 1855, as "one of its earliest and most valuable members." The manuscript Records of the Catholic Manor of St. Clement's, presented to the Society by Colonel Campbell, together with other documents relating to the History of Maryland, is preserved in Portfolio No. 6, Document I, and is described in the Catalogue of the Manuscripts of the Society, printed in 1854, under the supervision of

* The above is not the exact text of Gerrard's petition, but conveys its substance. H.B.A.

Lewis Mayer, Esq., assistant librarian, as "Manuscript Records of Courts Baron and Courts Leet held in St. Clement's Manor, at several times, from 1659 to 1672, folio." Mr. Gatchell, the present assistant librarian of the Society, has put the Editor in possession of these facts touching the original records of St. Clement's and concerning Mr. B. U. Campbell, who presented them to the Society.

The existence of these Records was, in fact, well known to gentlemen who are familiar with the library resources of the Maryland Historical Society, but Mr. Johnson is the first to make known the historical significance of Court Leet in Maryland. Not until his inquiries touching the origin and character of Old Maryland Manors were well advanced did he obtain knowledge of the existence of these Records. His inquiries of Mr. George Johnston, author of the History of Cecil County, as to the possible survival of the Old English Court Leet upon Maryland Manors led that gentleman to a conference with Mr. J. W. M. Lee, librarian of the Maryland Historical Society and to the examination of the long catalogued but never utilized Records of the Manor of St. Clement's. Mr. Lee kindly undertook the task of making an exact transcript of the Records and thanks are due to him for supervising their accurate reproduction by the printer.

The survival upon one of the Maryland Manors, of a Court Leet (German *Leute*, people), or that old English popular court of manorial tenants, is interesting and important as showing the continuity in *Terra Mariae* of that ancient Germanic institution of village *folcmote*, which has evolved into modern Parish and Vestry-Meetings, and also into Town-Meetings and City Councils.

The Editor of this series takes great pleasure in publishing the following note touching Cooke's Hope Manor in Talbot County, communicated by the eminent antiquary and local historian, Dr. Samuel A. Harrison, of Easton, Maryland. "A Manor of one thousand acres granted to Miles Cooke by patent dated Jan 17th 1659, under the great seal of Cæcilius, Lord Baltimore, lying north of Great Choptank river, on the north side of the east branch of a creek of the said river called Tredavon. This manor is mentioned in a deed from Mr. Saml. Cooke, through his attorneys, to Mr. John Edmondson, dated Apr. 17th 1683. The following is an extract from this deed of the attorneys of S. C. to J. E. recorded in Liber No. 4, p. 195, of the Land Records of Talbot County, Maryland.

". . . Containing and Laid out for One thousand Acres (more or less) together with all Royalties & Priviledges (Royal mines excepted) most usually belonging to Mannors in England, to have and to hold ye same unto him ye sd Miles Cooke his heirs and assigns for ever to be holden as of ye Honour [?] of St. Marey's in free and Comon Soccage by fealty only for all services under ye yearly rent of Twentie [? Seventie] Shillings Sterling in silver or Gold or ye full value thereof in such comodaties as ye sd Lord Proprietary or his heirs should accept thereof, and ye sd Lord Proprietary did by his Letters Pattent Erect ye sd Thousand Acres into a

Mannor by ye name of ye Mannor of Cookes Hope Together with Court Baron and all things thereunto Belonging by ye Law or Custome of England, as by ye s^{d} Letters Pattents Relation thereunto had doth and may more at large appeare."

The following note upon manorial Tithingman in Maryland is thought by the Editor to be of sufficient interest to justify its reprint from Bozman, ii, 138, who quotes it from the manuscript Bill of 1638, folio 21. The motto relating to Tithingmen, printed upon the reverse of the bastard-title of this paper, was taken from Bacon's printed Laws of Maryland, which only gives the heading of the Bill. The following is an extract from the text: "The lord of every manor within this province, (after any manor shall be erected), shall yearly at the first court baron held after Michaelmas in any year nominate and appoint some inhabitant of the manor, (not being in the council), to be tithing-man of that manor, to have the same power as a tithing-man in England." Bozman adds, "The duties of a tithing-man in England were, at this time, nearly the same as those of a *petty* constable. They were usually chosen by the jury at the court-leet, —a criminal court appertaining to a manor."

NOTE ON THOMAS GERRARD,

LORD OF ST. CLEMENT'S MANOR.

Thomas Gerrard, Surgeon, was a brother-in-law of Marmaduke Snow, and came into the province about the year 1638. On the 29th of October, 1639, "Thomas Gerrard Gent. demandeth Land of the Lord Proprietary due him by conditions of Plantation for transporting himself with five able men servants in the years of our Lord 1638 and 1639." The five able men servants were John Longworth, Peter Hayward, Samuel Barrett, Thomas Knight and Robert Brassington. The following day (Oct. 30th) an order was issued to the Surveyor to lay out for Mr. Thomas Gerrard, 1000 acres of land including St. Clement's Island. The land was surveyed Nov. 2, and the Surveyor's report is as follows: "Set forth for Thomas Gerrard Gent. a neck of land lyeing over against St. Clements Island, bounding on the South with Potowmack River, on the north east with a Creek running westward out of St. Clements Bay, Called St. Patrick's Creek, on the east with the said Clement's bay, on the northwest with a Creek running out Mattapanient bay called St. Catherines Creek on the west and south west with part of the said Bay and Potowmack River, the said neck containing in the whole nine hundred and fiftie acres or thereabouts. Likewise set forth for the said Thomas Gerrard, the Island over against the said neck called St. Clements Island, and Containing four score acres or thereabouts. (Signed) John Lewger Surveyor."

On the following day (Nov. 3), a patent was issued to Thomas Gerrard of the above tract constituting it a Manor by the name of St. Clement's Manor, and giving him, his heirs and assigns authority to hold Courts Baron and Courts Leet upon the said Manor. Thos. Gerrard was commissioned Privy Councillor September 18, 1644, and being several times reappointed, held this position until 1658. He himself was a Roman Catholic, but his wife, Susan, was a Protestant. (See trial of Fitzherbert, in Davis' Day Star). In 1642 he was accused before the council of disturbing the worship of the Protestant inhabitants by taking away the Key of their Chapel and carrying away their books. He was found guilty and sentenced to pay a fine 500 pounds of tobacco. He was still alive in 1666, and had children. The approximate date of his death and the names of his children could be learned from his will which is no doubt on record at Annapolis.

CHRISTOPHER JOHNSTON, JR., M. A., M. D.

RECORDS*

OF THE

COURT LEET AND COURT BARON

OF

ST. CLEMENT'S MANOR,

1659-72.

S^{t} CLEMENTS MANOUR } ss A Court Leet & Court Baron of Thomas Gerard Esq^{r} there held on Thursday the xxviith of October 1659 by Jn^{o} Ryves gent Steward there.

CONSTABLE. Richard ffoster Sworne.

RESIANTS: Arthur Delahay: Robt^{e}: Cooper: Seth Tinsley: Willm: at Robt^{e} Coles: Jn^{o} Gee Jn^{o} Green Benjamin Hamon Jn^{o} Mattant.

FFREEHOLD^{RS}: Robt^{e} Sly, gent: Willm: Barton gent: Robt^{e} Cole: Luke: Gardiner: Barthollomew: Phillips Christopher Carnall: Jn^{o} Norman: Jn^{o} Goldsmith.

LEASEHOLDERS Thomas Jackson: Rowland Mace: Jn^{o} Shankes Richard ffoster: Samuell Harris: John Mansell: Edward Turner: ffrancis Sutton with: Jn^{o} Tennison:

JURY AND HOMAGES	Jn^{o} Mansell	} Sworne		Jn^{o} Tennison	} Sworne
	Bartholl: Phillips			Jn^{o} Goldsmith	
	Jn^{o} Shankes			Jn^{o} Mattant	
	Jn^{o} Gee			Sam: Harris	
	Edward Turner			Jn^{o} Norman	
	Seth Tinsley			xōfer Carnall	

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*My thanks are due to the Maryland Historical Society for permission to print these records. I am also under obligation to Mr. J. W. M. Lee, Librarian of the Society, for kind and efficient aid in deciphering and transcribing them; and to Mr. Geo. Johnston, of Elkton, for calling my attention to them in the first instance.—J. J.

ORDT AGT SAM: HARRIS — Wee the aboue named Jurors doe prsent to the Court that wee finde how about the 3d day of octobr 1659 that:

Jmprimis wee prsent that about the third of October 1659 that Samuell Harris broke the peace wth a Stick and that there was bloudshed comitted by Samuell Harris on the body of John Mansell for wch hee is fined 40l tob wch is remitted de gratia dni.

Wee doe find that Samuell Harris hath a licence fro' the Gou'nor & wee conceive him not fitt to bee prsented.

ORDR AGT ROBTE COLE — Jtem wee prsent Robert Cole for marking one of the Lord of the Mannors hoggs for wch hee is fined 2000l Tobco affered to 1000l.

Jtem wee prsent Luke Gardyner for catching two wild hoggs & not restouringe the one halfe to the Lord of the Manor wch he ought to haue done & for his contempt therein is fined 2000l Tobco afferred to 200l of Tobco.

Jtem we prsent that Cove Mace about Easter last 1659 came to the house of John Shancks one of the Lord of the Mannors tenants being bloudy & said that Robin Coox & his wife were both vpon him & the said John Shancks desired John Gee to goe wth him to Clove Maces house & when they the sd John Shancks & John Gee came to the said Cloves his house in the night & knocked att the dore asking how they did what they replyed then the sd John Shancks & John Gee haue forgotten But the sd John Shancks asked her to come to her husband & shee replyed that hee had abused Robin & her and the said John Shancks gott her consent to come the next morning & Robin vp to bee freinds wth her husband & as John Shancks taketh shee fell downe on her knees to bee freinds wth her sd husband but hee would not bee freinds wth her but the next night following they were freinds and Bartholomew Phillipps saith that shee related before that her husband threatened to beate her & said if hee did shee would cutt his throat or poyson him or make him away & said if ever Jo: Hart should come in agayne shee would gett John to bee revenged on him & beate him & hee heared the said William Asiter say tht shee dranke healths to the Confusion of her husband and said shee would shooe her horse round & hee the said Bartholomew Phillips heard the said Robin say if ever hee left the house Cloves should never goe wth a whole face. Jt is ordered that this businesse bee transferred to the next County Cort according to Law.

Also wee present John Mansell fore entertayning Beniamyn Hamon & Cybill his wife as Jnmates Jt is therefore ordered that the sd Mansell doe either remove his Jnmate or give security to save the Pish [parish] harmlesse by the next Cort vnder payne of 1000l Tobcor.

Also wee prsent Samuell Harris for the same and the same order is on him that is on John Mansell.

Also wee present the Freeholders that have made default in their appearing to forfeit 100l Tobcō apeice.

Wee doe further p^{r}sent that our Bounds are at this p^{r}esent unpfect & very obscure. Wherefore wth the consent of the Lord of the Manno^{r} Wee doe order that every mans land shall bee bounded marked and layed out betweene this & the next Co^{rt} by the p^{r}sent Jury wth the assistance of the Lord vpon payne of 200l Tob'coe for every man that shall make default.

St. Clements Manno^{r} } sst At a Court Leet & Co^{rt} Baron of Thōms Gerard Esq^{r} there held on thursday the 26th of Aprill 1660 by John Ryves Steward there

Constable Richard ffoster

Resiants Robert Cowx William Roswell John Gee John Greene Beniamin Hamon

Freeholders: Robert Sly gent Will'm Barton gent Robt Cole Luke Gardiner Christopher Carnall John Norman John Goldsmith

Leaseholders Thom's Jackson Richard ffoster Samuell Norris John Mansfeild Edward Turner John Shancks Arthur Delahay
Clove Mace John Tennison

Jury and Homage	Christopher Carnall	Richard Smith
	John Tennison	John Norman
	John Gee	John Love
	Edward Turner	George Harris
	Beniamyn Hamon	Willm Roswell
	John Greene	Walter Bartlett

Wee the above named Jurors doe p^{r}sent to the Co^{rt} Luke Gardiner for not doeing his Fealty to the Lord of the Manno^{r} Jt is ordered therefore that hee is fined 1000l of Tobcōe

Wee p^{r}sent fower Jndians viz^{t}

for breakinge into the Lord of the Manno^{rs} orchard whereof three of them were taken & one ran away & they are fyned 20 arms length of Roneoke

Wee p^{r}sent also two Jndian boyes for being taken wth hoggs flesh & running away fro' it & they are fined 40 arms length.

Wee p^{r}sent also a Cheptico Jndian for entringe into Edward Turners house & stealinge a shirt fro' thence & hee is fined 20 arms length if he can be knowne

Wee p^{r}sent also Wickocomacoe Jndians for takeinge away Christopher Carnalls Cannowe fro' his landing & they are fyned 20 arms length if they bee found

Wee p[r]sent also the King of Cheptico for killing a wild sow & took her piggs & raysed a stock of them referred to the ho[ble] the Gouno[r].

Wee concieve that Jndians ought not to keepe hoggs for vnder p[r]tence of them they may destroy all the hoggs belonginge to the Manno[r] & therefore they ought to bee warned now to destroy them else to bee fyned att the next Court Referred to the hō[ble] the Gou'no[r]

Wee reduce Luke Gardiners fyne to 50[l] of Tobcōe

We am'ce the fower Jndians to 50 arms Length of Roneoke & the Jndian that had his gun taken fro' him to bee restored agayne to the owner thereof

The Jndian boyes wee am'ce 40 arms Length of Roneoke as they are above am'ced

Wee am'ce the Cheptico Jndian for stealing Edward Turners shirt to 20 arms length of Roneoke

Wee am'ce also Wickocomacoe Jndians for takeinge away Christopher Carnalls Cannowe to 20 arms Length of Roneoke

Memorand that John Mansfeild sonne of ——— Mansfeild deceased came into this Co——— did atturne tēnt to the Lord of this Manno[r]

S[r] Clements Manno[r] } A Court Leet & Court Baron of Thomas Gerrard esquire there held on Wednesday the Three & Twentieth of October 1661, by Thomas Mannyng Gent Steward there for this tyme

Bailiff William Barton Gent.

Constable Raphael Haywood Gent

Resiants M[r] Edmond Hanson George Bankes ffrancis Bellowes Tho: James John Gee Michael Abbott.

ffreeholders Robt Sly Gent Will Barton Gent Luke Gardiner Gent, absent Robt. Cole Gent. Raphael Haywood Gent Bartho Phillips Gent.

Jury	Rich: ffoster		Robt Cole
	Edward Conoray		Bartho Philips
	Edward Runsdall		Edward Conovay
	John Shankes		Edward Ransdell
	John Knape		Gerett Brenton
	Gerett Brenson	Jury and	Clobe Mace
	Clove Mace	Homage	Edmond Hanson
	Robt Cooper		Robt Cooper
	Arthur De La huy		Arthur De La hay
	John Tenison		Wm Rosewell
			Tho: James
			Mich. James.

[Several leaves of the record missing.]

The Court adiorned till two of the Clocke in the afternoone.

John Gee and Rich. foster sworne

The Jury presents that Bartho: Phillips his Landes not marked and Bounded Round

The Jury Lykewise present that the Land belonging to Robt Cooper and Gerett Breden is not marked and bounded Round

The Jury Presents Robt Cooper for Cutting of sedge on S^{t} Clements Jsland and fowling wthout Licence for w^{ch} he is Amerced 10^{l} of Tob. Affered to 10^{l} of Tob.

The Jury Present that Edward Conoray while he was Rich fosters servant did by accident worray or Lugg wth doggs on of the L^{d} of the manno^{rs} Hoggs and at another tyme Edward Conoray going to shoot at ducks the dog did Run at somebodys Hoggs but we know not whose they were and did Lugg them for w^{ch} the Jury doe Amerce Rich: ffoster 50^{l} of Tob Affered to 20^{l} of Tob.

The Jury presents M^{r} Luke Gardiner for not appearing at the Lords Court Leet if he had sufficient warning

S^{t} Clements Manor^{s} } ss A Court Leet of Thomas Gerard Esq^{r} there held on Thursday the eighth day of September 1670. by James Gaylard gent. steward there.

Essoines: Benjamin Salley gent James Edmonds Rich^{d} Vpgate Cap^{t} Peter Lefebur these are essoined by reason they are sick and cannot attend to do their suit.

ffreeholders: Justinian Gerard gent, Robt^{e} Sly gent, Thom Notley gent, Capt Luke Gardiner, Benjamin Salley gent, Robert Cole, Barthollomew Phillipps, Jn^{o} Bullock W^{m} Watts, James Edmonds, Richard Vpgate, Simon Rider, Jn^{o} Tenison, Rich^{d} ffoster, Edward Connory, Jn^{o} Shankes, Jn^{o} Blackiston,

Leaseholders: Robte Cowper Capt Peter Lefebur, Henry Shadock, Rich^{d} Saunderson Jn^{o} Hoskins, Thomas Catline.

Resiants: Rich^{d} Marsh, Joseph ffowler Roger Dwiggin Thom Casey, Jn^{o} Saunders, Henry Porter, ffrancis Mondeford W^{m} Simpson W^{m} Georges George B ——— es W^{m} West, W^{m} Cheshire, Jn^{o} Paler, Robte ffarrer George Keith, Joshua Lee James Green, Thom oakely, Jn^{o} Turner, Maunce Miles, Jn^{o} Dash W^{m} ffelstead Jn^{o} Chauntry:

Jury	Rich^{d} ffoster	Sworne	Jn^{o} Blackiston	Sworne
	Jn^{o} Tenison		Jn^{o} Stanley	
	Edward Connory		Rich^{d} Saunderson	
	Robte Cowper		Jn^{o} Bullock	
	Thom Cattline		Thom oakely	
	W^{m} Watts		Jn^{o} Paler	

Bayliff Jn° Shankes & Sworne.

Presentm^ts: Wee p^rsent that Barthollomew Phillips his land was not layd out according to order of Court formerly made wherefore he is fined one hundred pounds of tobacco & caske to the Lord.

We p^rsent John Tenison for suffering his horses to destroy John Blakiston's Corne field.

We p^rsent that Jn° Stanly and Henry Neale killed three marked hogs vpon the Lords Manor: w^ch Capt Gardiner received w^ch hogs were not of Capt Gardiner's proper marke which is transferred to the next Provinciall Court, there to be determined according to the Law of the Province.

We p^rsent that Edward Connery killed or caused to be killed five wild hogs vpon the Lords Manor: this was done by the Lords order and License

We p^rsent that the Lord of the Manno^r: hath not provided a paire of stocks, pillory, and Ducking Stoole Ordered that these Jnstrum^ts of Justice be provided by the next Court by a generall contribution throughout the Manor:

We p^rsent That Edward Convery's land is not bounded in

We p^rsent That Thomas Rives hath fallen five or sixe timber trees vpon Richard ffosters land within this Manor: referred till view may be had of Rives his Lease

We p^rsent That Robert Cowper's land is not bounded according to a former order for which he is fined 100^l^ tobco.

We p^rsent That Jn° Blackiston hunted Jn° Tenisons horses out of the s^d^ Blackistons corne field fence which fence is proved to be insufficient by the oathes of Jn° Hoskins and Daniell White

We p^rsent Richard ffoster to be Constable for this Manor for the yeare ensuing who is sworne accordingly.

We p^rsent that Jn° Bullocks land is not bounded.

We p^rsent M^r^ Thomas Notly, M^r^ Justinian Gerard & Capt Luke Gardiner, ffreeholders of this Manor: for not a appearing to do their suit at the Lords Court wherefore they are amerced each man 50^l^ of tobacco to the lord

Jt is ordered That every mans land w^th^in this Manno^r whose bounds are vncertein be layd out before the next Co^rt^: in p^rsence of the greatest part of this Jury according to their severall Grants vnder penalty of 100^l^ tobcō for every one that shall make default.

Affeir Thomas Catline
Willm Watts } Sworne.

S^t^ Clements Manor } ss A Court Leet & Court Baron of Thomas Gerard Esq^r^ there held on Monday the 28^th^ of October 1672 by James Gaylard gent Steward there,

ESSONIES

FFREEHOLDERS. Justinian Gerard gent Gerard Sly gent Thomas Notley gent Benjamine Sally gent Capt Luke Gardiner Robt^e Cole Bartholomew Philips Jn^o Bullock. W^m Watts James Edmonds Richard Vpgate Simon Rider John Tennison Richard ffoster Edward Connory Jn^o Shankes Jn^o Blackiston Thomas Jourdaine.

LEASEHOLDERS Capt Peter Lefebur Henry Shaddock Richard Saunderson Jn^o Hoskins Thomas Catline

RESIANTS Joseph ffowler Roger Dwiggin Henry Porter W^m Simpson William Georges W^m West W^m Cheshire Jn^o Paler Joshua Lee Maurice Miles Jn^o Dash W^m ffelstead Richard Chillman Robte Samson Henry Awsbury Jn^o Hammilton W^m Wilkinson Abraham Combes Willm Harrison Jn^o Rosewell Vincent Mansfeild Edward Williams Marmaduke Simson Nicholas Smith Humphry Willey James Traske Derby Dollovan Jn^o Vpgate Thomas Rives Michaell Williams Jn^o Sprigg Charles Rookes ffrancis Knott Richard Hart Willm Polfe Thomas Attaway James Green Jn^o Ball Thomas Liddiard Edward Bradbourne Jn^o Suttle Jn^o Lee Jn^o Barefoot ffrancis Wood.

JURY W'^m Watts		Jn^o Bullock	
Jn^o Tennison		Thom oakly	
Jn^o Rosewell	Sworne.	Thom Jorden	Sworne.
Jn^o Stanly		Jn^o Hoskins	
Richard Saunderson		Jn^o Paler	
ffrancis Knott.		Vincent Mansfeild	

Edward Bradbourne complaineth ägt Jn^o Tennison that he unjustly deteineth from him 200^l tobcō to the contrary whereof the s^d Tennison having in this Coart taken his oath the s^d Bradbourne is nonsuited.

We p^rsent Jn^o Dash for keeping hoggs & cattle upon this Manno^r for wh^ch he is fined 1000^l tobcō.

We p^rsent Henry Poulter for keeping of hoggs to the annoyance of the lord of the Mano^r. Ordered that he remove them within 12 days under paine of 400^l tobcō & caske.

We p^rsent the s^d Henry Poulter for keeping a Mare & foale upon this Mano^r to the annoyance of Jn^o Stanly ordered that he remove the s^d mare & foale w^thin 12 daies vnder paine of 400^l of tobcō & caske

We p^rsent Joshua Lee for injuring Jn^o Hoskins his hoggs by setting his doggs on them & tearing their eares & other hurts for which he is fined 100^l of tobcō & caske

We p^rsent Humphry Willy for keeping a tipling house & selling his drink without a License at unlawfull rates for w^ch he is fined according to act of assembly in that case made & provided

We p^{r}sent Derby Dollovan for committing an Affray and Shedding blood in the house of the s^{d} Humphry Willy Ordered that the s^{d} Dolovan give suretys for the peace.

We p^{r}sent W^{m} Simpson for bringing hoggs into this Mano^{r} for which he is fined 3^{l} of tobcō And ordered that he remove them in 10 days vnder paine of 300^{l} of tobcō & caske

We p^{r}sent Robte Samson & Henry Awsbury for selling drinke at unlawfull rates for which they are each of them fined according to act of Assembly.

We p^{r}sent Simon Rider for keeping an under tenant contrary to the teno^{r} of his Deed referred till view may be had of the s^{d} Deed.

We p^{r}sent that Raphaell Haywood hath aliened his ffreehold to Simon Rider upon w^{ch} alienacōn there is a reliefe due to the lord

We p^{r}sent an alienacōn from James Edmonds to Thomas Oakely upon w^{ch} there is a Reliefe due to the lord and Oakely hath sworne fealty.

We p^{r}sent that upon the death of M^{r} Robte Sly there is a Releife due to the lord & that. M^{r} Gerard Sly is his next heire who hath sworne fealty accordingly

We p^{r}sent an alienacōn from Thomas Catline to Anne Vpgate

We p^{r}sent that upon the death of Richard Vpgate there is a Releife due to the lord & [Anne] Vpgate his relict is next heire

We p^{r}sent M^{r} Nehemiah Blackiston tenant to the land formerly in possession of Robert Cowper M^{r} Blackiston hath sworne fealty accordingly

We p^{r}sent an alienacōn from W^{m} Barton to Benjamine Sally gent upon w^{ch} there is a Releife due to the lord & M^{r} Sally hath sworne fealty to the lord.

We p^{r}sent an alienacōn from Richard ffoster of p^{t} of his ffreehold to Jn^{o} Blackiston upon which there is a Releife due to the lord

We p^{r}sent a Stray horse taken upon this Mano^{r} and delivered to the lord

We p^{r}sent Robte Cole for not making his appearance at this Court for which he is amerced 10^{l} of tobcō affeired to 6^{l} of tobco.

We p^{r}sent Edward ———nder to be Constable for this yeare ensuing Sworne accordingly.

AFFEIRO^{RS} W^{m} Watts, Jn^{o} Bullock } Sworne.

VIII

NORMAN CONSTABLES IN AMERICA

(*Enter* Dogberry, Verges, and Sexton, in gowns; and the Watch, with Conrade and Borachio).

Dog. Is our whole dissembly appeared?

Verg. O, a stool and a cushion for the sexton. . . . .

Sex. But which are the offenders that are to be examined? Let them come before master constable.

Dog. Yea, marry, let them come before me. . . . I am a wise fellow; and, which is more, an officer; and, which is more, a householder; and, which is more, as pretty a piece of flesh as any in Messina; and one that knows the law, go to; and a rich fellow enough, go to; and a fellow that hath had losses; and one that hath two gowns, and everything handsome about him.—*Shakespeare.*

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE
HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

VIII

NORMAN CONSTABLES
IN
AMERICA

Read before the New England Historic, Genealogical Society, February 1, 1882

By HERBERT B. ADAMS, PH. D.

BALTIMORE
PUBLISHED BY THE JOHNS HOPKINS UNIVERSITY
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CONSTABLES.*

By Herbert B. Adams.

IN the library of the Massachusetts Historical Society there is a small black letter volume, bearing the imprint of London, 1614, and entitled "The Dvties of Constables, Borsholders, Tythingmen, and such other lowe and lay Ministers of the Peace—by William Lambard of Lincolnes Inne, Gent." By the same author and in the same library there is another work imprinted in London, 1596, and entitled "A Perambulation of Kent: Conteining the Description, Hystories, and Customes of that Shyre," written originally in the year 1570 and first published in 1576. The latter work bears upon the reverse of the fly-leaf the name of Adam Winthrop, and upon the reverse of the title-page a Latin ode by Winthrop in praise of Lambard.† Scattered through the work are many annotations and curious scraps of writing in Winthrop's hand. This very book was brought to America by the first governor of Massachusetts, who was well read in the laws of England, like his father and like his scholarly descendant, the Hon. Robert C. Winthrop, who presented the above volume to the Historical Society, of which for many years he has been the honored president.‡ Through John Winthrop it is

* This paper was read before the New England Historic, Genealogical Society, Feb. 1, 1882.

† Adam Winthrop speaks of Lambard as a "student of the common Lawes—barrister—wise, learned and religious, as appereth by this booke." A few years ago, from a kind of inherited family interest in Lambard, the Hon. Robert C. Winthrop, when visiting Seven Oaks, County Kent, noted the existence of a monument to "the old perambulator of Kent, and 'the father of County Historians.'" (See Proceedings of the Massachusetts Historical Society, 1875–6, 197.) Lambard died at Greenwich near the seat of that ancient feudal manor, so famous in English colonial charters, which describe how lands are to be held of his Majesty, "as of his manor of East Greenwich in the County of Kent in free and Common Soccage and not in Capite nor by Knightes service." (See Plymouth Laws, 75. Compare with Records of Massachusetts, i. 4.) In the *Nouvelle Biographie Gênérale* there is an account of Lambard, based upon Nichol's *Life of Lambarde* and Bridgman's *Legal Bibliography*. From this account it appears that our author was born in London in 1536, and died, Aug. 19, 1601. He was a justice of the peace in the county of Kent, 1579, and, by reason of his special knowledge of legal antiquities, finally became Master of the Rolls, or keeper of the archives of England, through the favor of Queen Elizabeth. He compiled various learned works, some of which we have found in Baltimore: a collection of Saxon laws entitled Archaionomia, sive de priscis Anglorum legibus libri (Peabody Libr.); Eirenarcha, or duties of Justices of the Peace (Mass. Hist. Soc.); Pandecta Rotulorum; Archeion (or High Courts of Justice in England, to be found in the Md. Episcopal Libr.); Perambulation of Kent. The latter work is the corner stone of the local history of England. Lambard was collecting materials for the upbuilding of this work when he heard that Camden was engaged upon the same great task. Lambard discontinued his own researches, but they were afterward (1730) published as a Dictionarium Angliæ Topographicum et Historicum, which is a truly monumental treatise, although incomplete. Lambard deserves great reverence, for he was the founder of the modern science of local history which has grown to such grand proportions in English Town and County Histories, and in Winsor's Memorial History of Boston. Local history is the best foundation for national history. Mr. Edward A. Freeman, in an address to the Somersetshire Archæological and Natural History Society (Proceedings, 1880, vol. xxvi.), said "the proper way of studying local history" was "as a contribution to general history."

‡ The Hon. Robert C. Winthrop, in the first volume of the Life and Letters of John Winthrop, 41–3, describes this valuable work with particular reference to the manuscript notes by his ancestor. A copy of this book was brought over to this country by one of the

not improbable that the influence of William Lambard crept into the early local legislation of Massachusetts. At all events, this latter treatise which describes the freest of English Counties or the customs of Kent, whence the freehold land tenure of almost every English colony in America was derived, and the former essay on Constables, which describes the parish institutions of the mother country at the time the Puritans came over, are both historical monuments deserving not only watchful guardianship, but scientific attention.

The writings of William Lambard represent the most advanced state of English knowledge in the sixteenth century concerning the origin of municipal institutions. The work contains many errors and numerous incorrect etymologies, but these are faults of the time rather than of the man. Practically Lambard was the transmitter if not one of the fathers of English Institutional History. After him, in the reign of James I., came Lords Bacon and Coke and the now forgotten Dr. Cowell, commenting on the laws and Institutes of England, as handed down by Granville, Bracton, Britton, Fleta, Fortescue, Littleton and others. In the reign of Charles II. appeared Sir Matthew Hale, with the first regular History of the Common Law. For a century after Hale there was no really monumental treatise on English institutions, with the exception perhaps of Spelman's works and Dr. Wood's Institutes, until the year of the American Stamp Act (1765) when Blackstone's Commentaries were first published. Like all his predecessors, Blackstone was practically and necessarily a compiler. Whatever he had to say regarding the municipal institutions of England, concerning Constables, Tithingmen and Justices of the Peace, he extracted from older writers like Dr. Burns and William Lambard. Thus our monumental author of the sixteenth century has been built into the very foundations of English Institutional History. Since Blackstone there has been reared upon the basis of his work and that of his predecessors, a History of English Law by Reeves, the publication of whose treatise began the year American independence was acknowledged by Great Britain (1783). During the present century, the Institutional History of England has been greatly advanced by the writings of Palgrave, Kemble, Thorpe, Sir Henry Maine, Stubbs and Freeman, all of whom owe much of their inspiration to the historical science of Germany. From impulses proceeding from German scholars and from the new school of English historians, have sprung the recent American studies in historical jurisprudence, the essays in Anglo-Saxon Law by Henry Adams, Henry Cabot Lodge, Ernest Young and J. Laurence Laughlin, the Placita Anglo-Normannica, by Melville M. Bigelow, and the recent lectures by O. W. Holmes, Jr., on the Common Law.

early settlers of Patuxet (Plymouth), who appears to have removed to Rhode Island. This copy, through the courtesy of Mr. Winsor, was borrowed by the writer of this paper from the Library of Harvard College, and led to the discovery in Baltimore by Mr. Albert S. Cook of a third copy of the self-same edition (1596), which through the generosity of Mr. Cook is now in our possession.

Along this line of march, over old roads into new fields, American Institutional History will one day advance. It is the purpose of a little company of graduate students at the Johns Hopkins University to reconnoitre the ground.* They are now studying upon coöperative and, to some extent, upon representative principles, the local institutions of their respective states or sections of country. A few students represent Maryland; others Virginia, the Carolinas, Kentucky, Delaware, Pennsylvania, New Jersey and New York. One man has entered the field of Ohio; others, that of Michigan and the Northwest, where English institutions were planted upon French soil. A student from Canada will investigate the Anglo-French institutions of his Province. The writer of this monograph is studying the origin of the town institutions of New England, and presents the following research upon Constables as a contribution to the main subject.

The importance of the Petty Constable as a connecting link between New England Towns and Old English Parishes has never yet been recognized. To trace the origin and development of the constabulary office and to show its exact process of transition from the old country to the new is the object of this paper. Besides Lambard and the old time authorities, we have utilized the resources of modern historical science, the Statutes of the Realm and of the English Colonies, together with certain hitherto unpublished manuscripts brought over to New England by Jonas Humphrey, who settled in the parish-town of Dorchester, Massachusetts. According to the traditions of his family, he was a constable in Wendover, County Bucks, in England. An official warrant and a list of constabulary duties, preserved by this faithful officer, are the best possible sources of information as to the character of the constable's office at the time of the Puritan migration.

We are indebted for copies of the above-mentioned documents to the eminent antiquary of Dorchester, who lately prepared for publication the Suffolk Deeds (Boston, 1880), Mr. William B. Trask, a descendant of Capt. William Trask, one of the old planters of Salem. While utilizing in the body of this monograph many facts derived from the Humphrey manuscripts, we shall append the same in full, as they are likely to prove an interesting contribution to the history of our local institutions. Mr. Trask's letter, giving a brief account of Jonas Humphrey and of the manuscripts themselves, will constitute the best preface to their separate perusal. These documents will clearly show that the duties of constable were not only more honorable, but also far better understood in Humphrey's day than in the time of Blackstone.

The latter, in his very inadequate account of constables, says:

* Richard Frothingham, in his work on the Rise of the Republic of the United States, 26, says, "I have not met with a volume, or even an essay, on the growth of the municipal system in the United States."

"Considering what manner of men are for the most part put into these offices, it is perhaps very well that they are generally kept in ignorance" of the extent of their powers.* This observation, which has been quoted over and over again, as though it were an infallible precept of the Common Law, and which even finds honorable mention in the last edition of the Encyclopædia Britannica, in the article on "Constables," may perhaps account in some measure for the general disrepute and comparative obscurity into which this ancient office, once dignified and well known, has now fallen. Time was when the best men of an English parish held in rotation the office of Parish Constable. No one was permitted to decline the responsibility of village headship, except women, who were allowed to furnish substitutes. In an old book entitled "English Liberties," published in London, 1719, it is said, "The Petty Constable is chosen by the people of the Parish. . . . The Petty Constables ought to be honest and able Men both in Body and Estate, and not of the meaner Sort; and therefore it hath been held that they ought not to be chosen by the House or Custom, if not fit to execute the Office. But 'tis now ruled, That a Custom for the Inhabitants to serve by Turns is good; so if it happen on a Woman she must provide one to serve the Office."†

In attempting to reconstruct the historical idea of the office of constable, we cannot rely with any degree of confidence on Blackstone, for the constabulary office had evidently begun to degenerate even in his day; and, as we have already implied, the learned judge himself, in his enumeration of constabulary duties, merely quoted from older writers like Lambard, who were better informed. Neither can we rely implicitly upon Lambard or Lord Coke, for both of these early authorities fail to explain even the origin of the constable's name. Coke in his Institutes, following Lambard, says, "Constable or cunstable is compounded of the Saxon words cuninge per contractionem kinge, and stable, id est columen, quasi columen regis, anciently written cuningstable."‡ In other words, Lord Coke seriously maintains that the Constable, etymologically considered, is the support or mainstay of the King. Such an unwarrantable derivation of the name constable represents the fantastic, unscientific philology of the sixteenth century, inherited from the mediæval monks, who explained the origin of words with even more originality than did Horne Tooke or Noah Webster.

As a matter of fact, the term constable was introduced into England through the Norman-French Connétable, old French Conestable or Cunestable. The word is derived from the Low Latin Con-

*Blackstone's Commentaries on the Laws of England (Judge Cooley's ed.), i. 355.

†English Liberties or the Free-born Subject's Inheritance, containing Magna Charta, Charta de Foresta, &c. Lastly, of Justices of the Peace, Coronors, Constables, Churchwardens, Overseers of the Poor, Surveyors of the Highways, &c. Compiled first by Henry Care . . . In the Savoy, 1719.

‡Coke, Institutes, Part iv. cap. xvii.

stabulus (*comes stabuli*, or count of the stable). It is a word common to all the Romance languages, although in somewhat varying forms. It appears in the Provençal, in Italian, in Spanish and in Portuguese. Both the Latin and the French forms were early imported into England. In Magna Carta we have *Constabularius*. In the Rolls of Parliament frequently occurs the form *Conestable*. The institution itself, as understood by the Normans and the peoples of Southern Europe, was akin to the Byzantine *comes stabuli* and the classic Master-of-Horse. Undoubtedly the office had its origin in menial service in connection with the royal stable. Primarily a constable was a hostler. The constabulary office belongs to a nexus of court institutions, like those of chamberlain, cupbearer and steward, which are of immemorial antiquity and common to both Aryan and Shemitic monarchies.

We shall discuss the whole subject of the institutions of the Royal Household in a special paper on the Origin of the Modern Ministerial System, but, in this connection, would merely remark that the name constable suggests a certain Byzantine influence surviving in the office itself, as the name of Cæsar survives in the Russian Czar,* and the German Kaiser, or as the idea of the classic Imperator survives in modern emperors. Undoubtedly at a very early date Teutonic kings and dukes had their ministerial officers, their hostlers of high degree. The Franks had their Marschalk (from Mar, a horse, and Schalk, a knave or servant), an institution surviving in France to this day, in two forms, (1) Maréchal de France, (2) Maréchal ferrant, or shoer of horses. The Lombard kings and dukes had their Marpahis. The Saxons had their Horsethegn or Staller. Of necessity such offices would exist in the equine establishment of every Teutonic chieftain. It is highly probable that an old Germanic institution was baptized by a Latin name, Constabulus, just as a German military leader becomes a dux or duke. Classic titles, Byzantine trappings and court usages were introduced into the royal households of almost every Teutonic king or count; but while thus clothed upon with a Latin name and oriental dignity, mediæval constables owe their historic origin to menial service. In the South German town of Heidelberg there stands in a good state of preservation an ancient feudal stable, built of old red sand-stone, and known as the *Marstall*. It is now used as a riding-school for University students; but it is a good surviving type of the original horse-stalls whence the Marshals of Saxony and of France, the Earl Marshals and Lord High Constables of England, rode forth to glory and honor.

* The notion that the word Czar was a corruption of Cæsar, was formerly unquestioned, but Creasy, in his Platform of International Law, 126, and in his History of the Ottoman Turks, i. 341, says it is an Oriental, possibly a Tartar word, meaning sovereign ruler. He thinks the Russians acquired it through the Sclavonic translation of the Bible. But Mr. Edward A. Freeman, in his recent lectures before the students of the Johns Hopkins University, on the Historical Geography of South-Eastern Europe, came to the rescue of the old etymology, saying that he had been assured by a Slavonic friend of undoubted authority, that the old derivation is the correct one.

The office of the Lord High Constable (*Constabularius totius Angliæ*) came into prominence as an hereditary office in the person of Miles of Gloucester in the reign of Stephen (1135–1154), although probably long before this constables had existed in every royal town and castle, in every earldom and upon every great manorial estate. Of course the office diminished in dignity the nearer it approached the common people. Among the subject Saxons existed a lowly office known by various names, as Tithingman, Borhs-Ealdor, Elder of the Pledge, Head-Borough, or Borough-Reeve, upon whom the shadow of the Norman name of constable was soon to fall, as the *umbra nominis Romani* had fallen upon many old Teutonic institutions. We cannot dwell at length in this connection upon the office of the Lord High Constable; suffice it to say, he was the representative of the King in all matters pertaining to armies and castles. He provided for all the King's horses and all the King's men. He mustered the royal forces and saw to it that every vassal sent his proper quota of armed men and horse. If an expedition was to be undertaken into foreign parts, the Lord High Constable provided means of transportation and served as kind of Inspector-General. He, in conjunction with the Earl Marshal, took cognizance of all offences committed during the foreign campaign, and decided all questions relating to the disposition of prisoners and booty. From the exercise of such functions arose Courts Martial and Martial Law.

According to Lambard and Blackstone the lower constabulary office was drawn from that of the Lord High Constable, "as it were a very finger from that hand." Blackstone differentiates the lower office into the High Constable of the Hundred and the Petty Constable of the town or parish. On the authority of Spelman, he says Petty Constables were "first instituted about the reign of Edward III."* We have looked through the statutes belonging to this reign and fail to find any sufficient ground for the above statement. It is at best rather a loose way of describing the origin of an institution to refer it to "*about* the reign" of a King who reigned for fifty years (1327–77). As to the origin of High Constables, Blackstone is more precise. He ascribes this institution to the Statute of Winchester, 13 Edward I. (1285), when it was enacted that "in every hundred and franchise two constables shall be chosen to make the view of armour."† Although Blackstone and all the host who follow him are wrong on this point also, for the Constable of the Hundred is much older than the Statute of Winchester, yet in this connection it is interesting to observe that the latter office appears to be intimately related to the militia system of which the Lord High Constable was the administrative head. By the Statute of Winchester, every man in England was to "have in his house harness for to keep the

* Blackstone, 355. Compare Lambard.
† Stubbs, Select Charters, 474.

peace." All men from fifteen to sixty years of age were to possess arms and armor according to their estate, the highest requirements being "an hauberke, an helme of iron, a sword, a knife, and a horse;" and the lowest, simply a bow and arrows. The Constables were to make a "view of armour" twice a year, and report all delinquents to some justice of the peace, who in turn reported them to the King in Parliament. This mode of procedure has its exact counterpart in the presentment of delinquents in arms and armor before the Plymouth and Massachusetts General Courts.

Other curious parallels between constables of old England in the thirteenth and of New England in the seventeenth centuries are the requirements in the Statute of Winchester that the above local officers shall report defaults in the highways, in watch and ward, and in bringing matters to justice; but the following is especially noteworthy: Constables "shall present all such as do lodge strangers in uplandish towns for whom they will not answer." The records of Plymouth and Massachusetts colonies are full of such enactments; for example in Massachusetts it was ordered "that the cunstables should inform of new comers, if any be admitted without license." It had been enjoined by the General Court that "no towne or person shall receive any stranger" without the allowance of magistrates.* It was ordained by the town of Newbury, Mass., that no one should be admitted as an inhabitant without the consent and approbation of the body of freemen resident in that town.† It has been thought that such restrictions upon new comers were marks of Puritan intolerance. They were simply revivals of old English law.‡ The Statute of Winchester is said by Canon Stubbs to be "a monument of the persistence of primitive institutions working their way through the substratum of feudalism and gaining strength in the process."§

For earlier outcroppings of the institutions of the Constable of the Hundred, and the Constable of the town or parish, we have only to turn back to the Assize of Arms,‖ 36 Henry III. (1252), whereby in every township one or two constables, according to the number of inhabitants, and in every hundred one chief constable (*capitalis constabularius*) were to be appointed. At the summons of the latter all men sworn to arms were to muster from their respective hun-

* Mass. Col. Rec., i. 196, 241.

† Coffin, History of Newbury, 23.

‡ Besides the evidence on this point in the Statute of Winchester, see also the Writ of 1233 for the conservation of the peace (*De forma pacis conservanda*): Item nullus hospitetur aliquem extraneum ultra unam noctem nisi possit invenire plegios de fidelitate et quod nullum damnum eveniet per eum, et respondeat pro eo sicut pro uno de familia sua.—Stubbs, Select Charters, 362.

Compare with the above the following extract from the MS. Town Records of Plymouth, Oct. 29, 1668: "Ordered by the Town, that the Selectmen shall henceforth have power to require any that shall receive any strangers, so as to entertain them into their houses, to give security unto them to save the Town harmless from any damage that may accrue unto them by their entertainment of such as aforesaid." It was likewise agreed that John Evenson be forthwith warned to depart the town with all convenient speed!

§ Stubbs, Select Charters, 470.

‖ Stubbs, Select Charters, 372.

dreds and follow his behests in whatever related to the preservation of the King's peace. Whoever were found under arms and not deputed for the above purpose were to be arrested. If they refused to allow themselves to be arrested, then the constables of the hundreds and of the towns were to levy the Hue and Cry upon the offenders and pursue them from town to town (*de villa in villam*) until they were finally taken. We are here very evidently on the historic track of ancient Saxon customs. We are at once reminded of a law dating back as far as the time of King Edgar (957–975) concerning the pursuit of a thief: "If there be present need, let it be made known to the hundred-man, and let him [make it known] to the tithing-men; and let all go forth to where God may direct them to go: let them do justice on the thief, as it was formerly the enactment of Edmund.—We have also ordained: if the hundred pursue a track into another hundred, that notice be given to the hundred-man, and that he then go with them."* There appears to be some connection between the Hundredman of the days of King Edgar and King Edmund (941–946) and the Constable of the Hundred in the days of Henry III. There surely is some relation between the Saxon Tithingman above mentioned and the Norman Petty Constable. Although there is a gap of three hundred years, yet the bridge between these Saxon and Norman institutions is natural and unbroken.

When the Normans made the conquest of Saxon England they found the country self-governed. The whole land was minutely subdivided into so-called Hundreds, or Wapentakes, and Tithings. The origin of these local divisions is of very great antiquity. They root in the military institutions of the ancient Teutons, whereby kindred warriors were mustered by tens and hundreds. The Hundred was the institutional multiple of the Tithing. But in many cases the Hundred was the long Hundred of six score, and it appears that the Tithing was sometimes known as Dozeine (Dizaine–10), for example in the Year Books of Edward III. It seems probable that the Hundred may have frequently contained twelve Tithings, and that there was some connection between these twelve local units and the judicial representation of the Hundred by twelve men, although in the Shiremoot and Hundredmoot the Tithing, Town, or Parish was represented directly by its Reeve, or Constable, and four best men. Undoubtedly both the Tithing and the Hundred were originally personal in their composition. Ten or more warriors made a Tithing, and ten or more Tithings constituted the Hundred, of which possibly a type survives in the militia company of one hundred men, for there is no break between the military institutions of Mediæval and Modern England. When a Teutonic Host, or army, settled down by kith and kin in local precincts bearing the names of families, then

* Thorpe, Ancient Laws and Institutes of England, i. 259, 261.

Tithings and Hundreds gradually became territorial in character, varying in size according to the amount of land occupied. In the more thickly settled parts of England Tithings and Hundreds are much smaller than in the more sparsely settled regions. Naturally with increasing population the numerical divisions would not remain constant. There are cases known where a Tithing contained as many as eighty men. The point was that there must be at least ten heads of families in order to constitute a Tithing, Town, or Parish.

Doubtless for a long period the Saxon Tithings and Hundreds sent their full quota to the muster of the Host, but gradually public demands diminished until finally, in the reign of Edward III., only one man-at-arms, equipped and furnished for sixty days, was required from each parish, although, if occasion demanded, the quota was increased. The requirement was always made of the Reeve and four best men, as representative of the town or parish. It is interesting to note that, down to modern times, English parishes kept each their suit of "town armour," usually in the parish church, for which reason the arms were sometimes called "church armour," or "church harness." In the parish records of Kingston-on-Thames, is an item of thirteen shillings, four pence, paid in 1603 "To James Allison and four others, for carrying the armour at the coronation." Here is perhaps the idea of military representation of the town by Reeve and Four. In the parish records of Fulham, Middlesex, there is the following inventory of parish armor: "Anno 1583. Note of the armour for the parish of Fulham, viz. Fulham side only. First, a corslet, with a pyke, sworde, and daiger, furnished in all points, a gyrdle only excepted. Item, two hargobushes [arquebuses, German *hakenbuechse*, or gun with a hook, or forked rest], with flaskes and towch boxes to the same; two morryons [helmets without visors]; two swords, and two daigers, and two hanglesses unto two swords: which are all for Fulhame side only. All which armore are, and do remayne, in the possession and appointment of John Pulton or Northend, being constable of Fulham-syde the yere above wrytten."

The local institutions of England developed from military germs implanted in the village community system of immemorial antiquity. The above example of town armor in the keeping of the constable is only a historical survival, suggesting the original martial character of the entire community. We must regard the local settlements of our Saxon forefathers as the permanent encampment of a Teutonic Host, by Hundreds and Tithings, or by companies and squads, under the command of Hundredmen and Tithingmen, who mustered their respective quotas from local precincts, and who, in the midst of agrarian pursuits, served as watchful sentinels, ever ready to arouse a peaceful population to arms. With the Saxons the object of wars and forays was to secure a better footing for peace.

When the war or expedition was over, it remained the duty of the Hundredmen and Tithingmen, as local watchmen and police magistrates, to keep the peace. Hence arose the civil functions of officers once purely military. The Saxon system of Watch and Ward, which is the germ of our modern police system, the Courts of the Tithing and of the Hundred, which are germs of the town meetings and General Courts of New England,—these institutions, together with Petty Constables and Justices of the Peace, were all the outgrowths of military beginnings. The ancient Tithingman became the Parish Constable, the keeper of the village peace and of the town armor, whose chief duty, as late as the time of the Tudors, was "to prepare the muster of his district, which the constable of the shire would embody in the array of the county, to be in turn marshalled in the army of the realm by the high constable of England."* Palgrave says the mailed leader of the Hundred became a rustic peace officer.† But constables and their developed type, the modern policemen, are more interesting historically than justices of the peace, for the former represent the actual survival of a more or less military power in the midst of civil society. Constables may be plain men in civic garb, but let these quiet sentinels of slumbering towns and villages but give the alarm of approaching danger. The whole community springs at once to arms. The entire town, if necessary, becomes a constable's watch. The alarm will quickly spread from hamlet to hamlet, and from shire to shire, until the whole people becomes again an armed host, a *Landsturm* sweeping peril from its borders. The American Revolution sprang from town meetings in the North and parish meetings in the South, both warned by constables. The great armies levied by both sections of country during our late civil war, were but the uprising of the old militia spirit still lurking in our local institutions. And even the military system of Germany, with its power to draft the entire male population, must be regarded only as a more perfect development of primitive Teutonic institutions of a martial character.

The Normans reconstructed England upon the basis of existing local institutions. The Hundred and the Tithing were both retained, the latter, however, under the name of innumerable Townships and Parishes into which ancient Tithings had grown. The fact that Tithings are not distinctly mentioned under that name in the Domesday Book is not of such importance as Gneist‡ and other writers have alleged, for an original Tithing of inhabitants very naturally adopted some local name derived either from a leading family

* The Parish in History, 29. By a hereditary High Churchman. London, 1871.

† Palgrave, English Commonwealth, i. 201.

‡ Gneist, Verwaltungsrecht, i. 51, 59. But compare Palgrave, English Commonwealth, ii. cxxi., where he shows that territorial Tithings existed in the reign of Henry III. (1216–72), and, indeed, as early as the reign of Athelstan (925–941). In the Rolls of the Itinerary of Devonshire, 23 Henry III., occur such entries as "Thedinga de Herticumbe," spoken of as synonymous with the "Villa de Herticumbe."

or from geographical surroundings. But the old name of Tithing lingered on, in connection with local names, in very many English counties, in Gloucestershire and Worcestershire, and "in all counties south of the Thames (except Kent and Cornwall) where they answer to the townships of other counties."* Tithings still exist in the south-west of England, in Somersetshire and Wiltshire. Mr. Edward A. Freeman, the English historian, during his recent visit to Baltimore, informed us that he lived in the Tithing of Burcott, Wells, County Somerset, which Tithing used to tax itself for local purposes before the recent Poor Law and Highway Act.

There can be no doubt as to the substantial identity of the institutions of Saxon Tithingman and Norman Petty Constable. In the Rolls of Parliament belonging to the time of Henry VI. (1422–61), these officers are spoken of synonymous, "Chescun Conestable, Tithingman, ou chief Plegge, de chescun Ville ou Hamell." The coexistence of the old and new names may be thus explained. The head-men of the more important Tithings became known as Petty Constables, whereas in the vills and hamlets of less importance, although in the same neighborhood, the old Saxon Tithingmen remained. In some places they were called Chief Pledges, Elders of the Pledge or Borhs-Ealdors (corrupted in Lambard's time into Borsholders), Head-Boroughs, Borough-Reeves, Third-Boroughs and the like. "In some shires," says Lambard, "where euerie Third Borow hath a Constable, there the officers of the other two be called Third-borowes."† In a special treatise on the duties of the Justice of the Peace, Lambard says: "To be short, euery Constable, petie Constable, Tithingman and Borowhead, be Conservators of the Peace by their offices within the limits of their Hundreds, Towns, Tithings and Boroughs. And by the same reason our Borsholders in Kent and their Thirdborow in Warwickshire be Conservators also within their Boroughs. For Borowhead, Borsholder, Tythingman be three seuerall names of one selfesame office, and doe signifie, the chiefe man of the free pledges within the Borow or Tything."‡ Free Pledge or Frank Pledge is only a corruption of the Saxon *Frith-Borh* or Peace-Pledge. It was the personal Tithing, the Tenmannetale of Yorkshire, or ten men who were bound together, under the authority of the Tithingman, to keep the peace.

The Saxon Tithingman and the Norman Petty Constable were both elective officers. They were the Selectmen of their neighborhoods. The Petty Constable, so called to distinguish him from the High Constable of the Hundred, continued to be elected by his Tithing, Vill, or Parish, down to recent times. He was elected in one of two ways, either in the Vestry-Meeting of the Parish or in the Court Leet (German *Leute*) or popular Court of the Manor. The Tithingman, Gerefa, Reeve, or Constable, appears to have acted as

* Stubbs, Constitutional History of England, i. 86.
† Lambard, Duties of Constables, 8.
‡ Lambard, Eirenarcha, 14.

the agent of the Lord of the Manor, or of the Town, in regulating the Tithing and keeping the Peace-Pledge of the little community, but "he seems," says Palgrave, "to have been usually nominated or elected by the tenantry, who chose him by the presentment of the Leet Jury; at least, such was the general custom after the Conquest, a custom which was recognized as a part of the traditionary Common Law, and to which we may assign the same antiquity as to the other portions of the system."* Sir Thomas Smith, an old English writer contemporary with the fathers of New England, says, "Constables are commonly made and sworn at the Leets,—chosen thereto by the homage: and they keep that office [though usually an annual one in England] sometimes two, three, or four years, more or less, as the Parish doth agree."† The connection between Parish and Manorial institutions is very close and sometimes confusing. The Court Leet appears to have been a kind of popular police court for the town or parish over which a Lord had jurisdiction. The Leet was the common people sitting in judgment upon itself; it was a judicial survival of the primitive *Tun Gemot* or Town Meeting of the Saxon Tithing. The Vestry, or Parish Meeting, is only another civic form in which this ancient local institution has perpetuated its vitality. In some Parishes the Petty Constable was chosen at the Vestry Meeting instead of at the Court Leet, but whatever the local custom in regard to the election of the constable, he was required to warn and be present at all Parish Meetings, and, before the time of Archbishop Laud, frequently presided over Parish deliberations. "The Parish makes the Constable," said Selden, "and when the Constable is made, he governs the Parish."‡ There can be no doubt but that the Petty Constable, like the ancient Saxon Tithingman, was once the chief man of his neighborhood. Toulmin Smith says the Constable "formerly took precedence of the Churchwardens in Parish affairs. He long ranked as the first man of the Parish."§

We must regard the Parish and the Manor as institutions superimposed upon primitive Village Communities, Tithings, Townships, Hamlets (or Vills) of the Saxons. Mr. Pearson is inclined to believe that "the Tithing in many parts of England was the basis of the manor, the lord becoming the natural president of the Tithing Court, as he bought up the land or received the service of the freeholders by voluntary transfer."‖ The Church, too, built upon existing foundations. Pagan villages like Totteridge (the ridge of Tuisco or Tuto), Wednesbury (the borough of Wodan), Torrington (the town of Thor), became Christian Parishes.¶ Mr. Pearson,

* Palgrave, English Commonwealth, i. 67, 81, 82, 124.
† Sir Thomas Smith, Commonwealth of England (1621), Book ii. cap. 25, quoted in Toulmin Smith's "Parish," 125.
‡ Selden, Table Talk, "People."
§ Toulmin Smith, The Parish, 121.
‖ Pearson, Historical Maps of England, 52.
¶ "The Parish in History," 6.

in the preface to his Historical Maps, says the priests adopted the secular divisions which they found ready to their hands. He has shown in his maps the territorial identity of many ancient Saxon Tithings with modern English Parishes and Townships. He says, "Ten families constituted a tithing, the self-governing unit of the state, which is now represented among us by the parish, and ten tithings were a hundred, whose court administered justice among the little communities themselves."* Pearson has shown that the Hundreds of Devonshire contain on the average about ten Parishes each, a strong argument for the historical identity of these civic units with the original territorial Tithings in Devonshire of which Palgrave speaks.

Most important for this line of inquiry is a principle of the Common Law which has been repeatedly enunciated in England, to the effect that wherever there is a Constable there is a Parish or a Township.† "A separate Constable," says Toulmin Smith, "is an unquestioned criterion of the separate recognition of a Parish. The fact of having a Constable has always been the necessary incident of a Parish or Vill."‡ Chief Justice Hale observed on this point: "One Parish may contain three vills; the Parish A may contain the vills A, B, C; that is, when there are distinct Constables in every one of them; but if the Constable of A doth run through the whole, then is the whole but one vill in law."§ The term Vill is the Norman equivalent of the Saxon Tun, Town, or Tithing. Blackstone says, "Tithings, towns or vills are of the same signification in law."‖ The Parish often embraced several of these petty local divisions. In the time of Edward IV. some Parishes in Cornwall are said to have prospered so much as to have become divided into as many as twelve or fifteen parts, each treated as a Vill by itself. Doubtless an original Tithing of inhabitants took up more and more waste land as circumstances required, and doubtless, with an increasing population, colonial hamlets sprang up, electing their own Tithingmen, becoming independent, or remaining more or less united under the comprehensive name of some one leading Tithing, Town, Parish or Manor, like the Villes or Parishes composing a New England Town.¶

It is an interesting fact, which has never yet been emphasized, that the origin of New England towns is closely connected with military and constabulary institutions. As the Saxon Tithings and Hundreds began in the local settlement of armed bands, keeping corporate watch and ward, so originated the first "Wards" of Ply-

* Pearson, Hist. of England during the early Middle Ages, i. 250.
† Gneist, Self-Government in England, 84; Fischel, The English Constitution, 323.
‡ Toulmin Smith, The Parish, 16, 120.
§ Waldron v. Roscarriot, 1 Modern Rep., 78, quoted by Toulmin Smith, 120.
‖ Blackstone, Commentaries, i. 114.
¶ The multiplication of Villes or Parishes within original town limits may be seen in a case like Newton, now a city, but once a town embracing Newton Centre, Newtonville, West Newton, Newton Upper Falls, Newton Lower Falls, Auburndale, Newton Corner, &c.

mouth Colony. It should not be ignored that the first landing in New England was not that of missionaries or defenceless exiles upon Plymouth Rock, but of armed men exploring Cape Cod, "with every man his musket, sword, and corslet, under the conduct of Captain Miles Standish." Undoubtedly the motives of the invaders were peaceful, but they came with arms in their hands, actually equipped with "armor" and "coats of malle," with "curtlaxes and short swords." There are repeated references in the Pilgrim Journal to the "armor" which they wore. They say, "We marched through boughs and bushes—which tore our very armor in pieces." When the explorers came upon a heap of buried Indian corn, the record says "we set our men sentinels in a round ring, all but two or three, which digged up the corn," of which the company took away as much as they could carry, "for we were so laden with armor that we could carry no more." This corn the Pilgrims afterward paid for when they found the owners, but their original procedure is very remarkable. The setting of a cordon of sentinels for three men to dig corn was a state of armed peace worthy of the ancient Saxons. When the explorers thought they were approaching an Indian village, they confess "we lighted our matches [matchlocks] and prepared ourselves." Of course they did. They were Englishmen believing in self-defence. Every step of their advance was marked by cautious military measures. One night a great noise was heard. The sentinels called, "Arm! Arm!" The Pilgrims bestirred themselves and shot off a couple of muskets and the noise ceased. The next day a real attack was made by the Indians. Again the little company flew to arms. Captain Standish had a flint-lock ready, and "made a shot," and after him another. He told the rest "not to shoote till they could take full aime." Some of the company ran out from the barricade "with coats of malle on, & cutlesses in their hands," to get their guns from the shallop, which secured they "let flye" among the Indians "and quickly stopped their violence." Thus "it pleased God to vanquish our enemies and give us deliverance."*

* These details and many more of a similar character may be found in Young's Chronicles of the Pilgrims (or Dexter's Mourt's Relation) and in Bradford's History of Plymouth Plantation.

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CONSTABLES.

By Herbert B. Adams.

THE first landing at Plymouth, on "Forefathers' Day," was by one of these exploring parties. They found there a good harbor for shipping, and they "marched also into the land," and found divers Indian cornfields, a deserted Village Mark, with running brooks, altogether "a place very good for situation." So the explorers, who had been ranging up and down Cape Cod for more than a month, returned to the Mayflower which had been anchored all this time in the harbor at Cape Cod, but which sailed into Plymouth harbor on the 26th of December. On the 28th another exploring party "went a land" and "marched along the coast for some seven or eight miles." Two days afterward, on the 30th of December, which should be forever memorable as the founders' day of Plymouth Town and Colony, the Pilgrims, "after landing and viewing the places—came to a conclusion by most voices, to set—on a high ground, where there is a great deal of land cleared." There above the open Mark rose the "great hill" upon which the Pilgrims proposed to plant their "ordinance," so as to command the surrounding country. Fort Hill, now called Burial Hill, was a natural acropolis, chosen for the defence of the "town," which was to be built beneath its shelter. The whole locality they thought could be easily "impaled." This was the very idea of a Saxon Town, from Tun or Zun, a place hedged in. Plymouth Rock well symbolizes, in the popular mind, the landing of the Pilgrims in the place of their settlement, although the final disembarkation did not

occur, perhaps, until March 31, 1621;* but on Dec. 30th, 1620, the real corner-stone of Plymouth and of New England was laid in the "conclusion by most voices to set—on a high ground," on the seaward slope of Fort Hill, which symbolizes the Town-idea of our Forefathers, a self-guarded village community, keeping watch and ward, and maintaining peace within its borders. There upon that acropolis was afterward "builte a fort with good timber, both strong and comly, which was of good defence, made with a flate rofe & batllments, on which their ordnance were mounted, and wher they kepte constante watch, espetially in time of danger. It served them allso for a meeting house, and was fitted accordingly for that use."†

It is a noteworthy fact that after the assertion of the democratic principle of "most voices," or a majority vote in the choice of a site for settlement and for the building of a Town, the first institution actually planted was of a military character. Before any Church Meeting or regular Town Meeting on shore, before the Common House which first sheltered both was built, the Pilgrims instituted what they called "the court of guard."‡ This was a night watch set by those on shore, Monday, January 4, 1621, from fear of the Indians, and for the protection of the products of the Pilgrims' first day's labor in felling timber and providing stuff for building. On the following day all able-bodied men came ashore and resumed their labor, but they returned to the ship that night leaving "some twenty to keep *the court of guard.*" Thus, ever on the alert, the Pilgrims proceeded to build their town "in two rows of houses for more

*1621, March 21 (31), "a fine warm day.— This day with much ado, we got our carpenter, that had been long sick of the scurvy, to fit our shallop to fetch all from aboard." Young's Chronicles of the Pilgrims, 190.

It may be that this passage refers solely to movable goods, and not at all to passengers yet on board; but the Journal of Jan. 29 (Feb. 8) says on that day, "Both the long-boat and the shallop brought our common goods on shore" (see Young, 170). And yet after this date we find Pilgrims still on board, for the Journal of Feb. 4 (14) says, "though we rid in a very good harbor, yet we were in danger, because our ship was light, the goods taken out and she unballasted." It is probable that some of the pilgrim band did not land as early as is commonly supposed, for Bradford (92) speaks of "schuch of ye passengers as were yet abord," who showed great kindness to the sailors when they in their turn began to fall ill. When the thatch of the Common House was destroyed by fire on the 24th of January, Bradford (100) says "some were faine to retire abord for shilter." There was a constant going to and fro between ship and shore throughout the winter, the men remaining on board for days during stormy weather. Probably there never was any general disembarkation upon Plymouth Rock at any one time, whether on the 21st of December, when the Mayflower was far away at Cape Cod, or on the 4th of January, according to the view advanced by S. H. Gay, in his article in the Atlantic Monthly, November, 1881, "When did the Pilgrim Fathers land at Plymouth?"

†Bradford, History of Plymouth Plantation, 126. It is very interesting that the Plymouth Church was first sheltered in the Common House and afterward in a Fort surmounted by six cannon. So fully were the Pilgrims imbued with the martial spirit that they actually marched to church, assembling "by beat of drum, each with his musket or firelock, in front of the captain's door." They marched up Fort Hill three abreast. "Behind comes the Governor, in a long robe; beside him, on the right hand, comes the preacher with his cloak on, and on the left the captain with his side-arms and cloak on, and with a small cane in his hand, and so they march in good order, and each sets his arms down near him. Thus they are constantly on their guard night and day." Letter of De Rasières, a Dutch officer from New Netherlands, who visited New Plymouth in 1627. See Collections of New York Hist. Society, New Series, i. 362, or Russell's Pilgrim Memorials, 143.

‡Young's Chronicles of the Pilgrims, 169.

safety." But their first building was a Common House for a "generall randevoze." Here the first Church Meeting on land was held January 31, 1621. Here was held the first regular Town Meeting in New England, February 27, "for the establishing of military orders." Miles Standish was chosen Captain, and was given "authority of command in affairs."* This was the first strictly local election in New England. It occurred more than a month before the election of Carver as Governor of *Plymouth*. To be sure Carver had been "confirmed" Governor on board the Mayflower in the harbor at Cape Cod, November 21, 1620, immediately after the signing of the Compact, but Governors and Assistants had been chosen for each ship "to order ye people by ye way,"† before the Colony set sail from Southampton. It is true John Carver was actually Governor when the Pilgrims landed at Plymouth; but it is also true that Miles Standish was at that time *Captain*, and had long been recognized as such in the conduct of explorations. The point is, that, in the actual foundation of the Colony at Plymouth, the choice of a military officer to command in *affairs* antedated the choice of civil officers, just as the "court of guard" antedated the General Court or Town Meeting, in the strictest meaning of those terms, although of course the "common sense of most" was the actual basis even of these martial institutions for defence. The *salus publica* was the foundation principle of Plymouth as of all civil society.

Immediately after the election of Standish, the popular assembly was broken up by the appearance of two savages on Strawberry Hill or Watson's Hill. The Townsmen armed at once and sent their headman, Captain Standish, accompanied by Stephen Hopkins, across the intervening Town Brook to parley with the Indians. From this time on, for many years, Captain Standish served as Chief Messenger for the Town Meeting, General Court or Folkmoot of Plymouth. He was chief spokesman in parleys with the Indians. He demanded of the fishermen at Cape Ann the restoration of Plymouth property. He arrested Morton at Merry Mount, and levied the expense of sending the rogue back to England upon Cape Ann and other local plantations then existing in New England. He arrested Indians and kept them in custody. He protected the life of one Indian simply because he was "a messenger," it being against "*the law of arms*—in Europe to lay violent hands on any such." He exercised the right of life and death over Indians beyond Plymouth borders, for in Massachusetts, at Mr. Weston's feeble plantation, where certain treacherous savages were plotting the destruction of all the settlements, Standish and his men shut up the leaders in a cabin and there killed them, "striving to the last." Other Indians were killed or hanged by his orders. He returned home to Plymouth, says the Pilgrim record, "in safety, blessed be God! and

* Young's Chronicles of the Pilgrims, 180.
† Bradford, Hist. of Plymouth Plantation, 68.

brought the head of Wituwamat with him," which was "brought to the fort and there set up." There is something old English about this method of procedure. It looks like primitive martial law. During the absence of Standish an Indian had come into Town who was suspected of being a spy. By order of the Governor he was arrested, taken to the Fort, "locked in a chain to a staple in the court of guard, and there kept," being told that he must remain content "till the return of Captain Standish from Massachusetts." *

What shall we call this Captain of Plymouth's Guard, this Keeper of the Town's Fort or Castle, this leader of expeditions, this organizer of militia by "squadrons or companies," appointing his own officers, holding "a general muster or training," † this Captain-General who became in 1645 the head of a military commission appointed by the four United Colonies of New England, but who still "condescended" ‡ to review the local militia of Plymouth, this Marshal exercising the right of life and death in the conduct of Indian campaigns, this Martinet of a little village, where the first offence was John Billington's "contempt of the Captain's lawful command with opprobrious speeches," the offender being therefor "convented before the whole company—and adjudged to have his neck and heels tied together"? § What shall we call the man under whose direction all such penalties must have been executed in early Plymouth? Surely not a mere Petty Constable, not simply a Captain of the local Militia, for he had also authority of command in public affairs. He was a colonial officer of the martial type, sometimes carrying the law in his own person like an ancient Roman prætor, an Earl Marshal or a Lord High Constable of England. Let us call Miles Standish the first martial representative in New England, as Miles of Gloucester was the first representative in Old England, of the iron hand of *sovereign* constabulary power, whence the "lower constableship was drawn and fetched,—as it were, a very finger of that hand."

In the year 1632 it was ordered by the General Court "in regard of our dispersion so far asunder, and the inconveniency that may befall," that every inhabitant provide himself a sufficient musket or other serviceable piece for war, also with ammunition. ‖ Such

* Standish's Expedition against the Indians of Wessagusset, in Young's Chronicles of the Pilgrims, 336-45. The above details have been gathered from Mourt's Relation and from Bradford's History of the Plymouth Plantation.

† Young's Chronicles of the Pilgrims, 284.

‡ Collections of the Massachusetts Historical Society, Second Series, vol. x. 60, "Notes on Duxbury."

§ Young's Chronicles of the Pilgrims, 199. This being "the first offence" committed in Plymouth, it was pardoned upon the culprit humbling himself; but soon after two servants, who had fought a duel, were adjudged to the above Old English penalty, which was duly inflicted. John Billington was afterward, in 1630, hung for murder, being tried and executed by due forms of law. See Hutchinson, Hist. of Massachusetts, vol. ii. 413. The execution must have been under the supervision of Captain Miles Standish, for there was, at that time, no other High Sheriff or Constable in Plymouth Colony. The first differentiation of these offices did not occur until 1634.

‖ Plymouth Col. Records, i. 6; Laws, 14, 31. For "Public Armes," see Laws, 51, 105; "Townes Armes," 181. *Town Armor!*

requirements, involving constabulary inspections and the evolution of a system of penalties for default in armor, carry us back to the ancient Statute of Winchester, whereby every man in the kingdom was obliged to have in his house defensive armor for keeping the peace; or, to the still earlier Assize of Arms (1181) whereby the freemen of every community were to have each a doublet of mail, a head-piece of iron, and a spear.* New England is linked to Old England by an iron chain of martial habits and martial institutions. Captain Miles Standish and the Town Constables of Plymouth Colony are as much links in this chain connecting the beginnings of our Towns with the Parishes of the mother country as if these men had come over to New England with the Town Armor and Parish Records of their native hamlets. In fact, the Pilgrims entered New England in coats of mail, armed also with the Town idea and the Common Law. "There already—ay in the Mayflower's cabin," said Rufus Choate, "was representative government. There already was the legalized and organized town, that seminary and central point and exemplification of elementary democracy."†

By the law of England, the criterion of the existence of a Parish or Township is the presence of a local Constable. It is worth while to apply this criterion to a study of the genesis of Towns and Parishes in New England. We do not suppose that this has always been a conscious standard for legislative action in the recognition of towns or for the actual determination of Town or Parish units, but we claim that without a Constable, or some power representing the corporate responsibility of the community for the preservation of the local peace, a Town would be an impossibility. There have been Towns in New England without Selectmen, without Ministers, without a Church or a Common School, but there never was a Town without a Constable. He is the *sine qua non* of an organized Parish or Township, and that by the authority of the Common Law, than which there is no greater authority in the history of English institutions. Miles Standish was practically the first Constable of Plymouth. He was the first officer chosen with "command in affairs." There is no evidence of the existence of any other Constable at Plymouth until Jan. 1, 1634, when Joshua Pratt was "chosen to the office of messenger and constable for Plymouth, and sworne to faithfulnes in the same."‡ The Constable of Plymouth in his capacity of Messenger, appears to have been a kind of High Sheriff. In 1637 we find a Plymouth man sworn messenger for the whole Government and Constable for the Town of Plymouth. The duties of Messenger, according to the earliest law upon the subject, were to be ready at the Governor's command or any of the Assistants' warning, "to doe such service as shall be appointed for the good of the seve-

* Stubbs's Select Charters, 154.
† Life and Writings of Rufus Choate, i. 385.
‡ Plymouth Col. Records, i. 21.

ral Colonies,* within this Government," and to be esteemed a public officer for the execution of warrants in any part thereof. The use of the plural form "Colonies" as synonymous with Towns or Plantations within the Government of Plymouth, is curious and suggestive. As Constable for the special "ward" of Plymouth, this officer was to have charge of the region from Jones's River southward, as far as any inhabit. He was to serve as "Jaylor to keep such as shall be committed." He was to execute punishment and penalties, and to give warning of marriages approved by civil authority. He was furthermore to act as Sealer of Weights and Measures, and as Surveyor of land, according to government orders. In his oath the Messenger swore loyalty to the King, and promised to promote "the welfare of the severall Colonies wthin this Government of New Plymouth," and as "Constable in the ward of New Plymouth," to see that his Majesty's peace be not broken.† Here, therefore, in the hands of one local officer, we see a bundle of powers derived from the Petty Constable of the English Parish, the High Constable of the Hundred, and the High Sheriff of the County.

On the very day Joshua Pratt was chosen Constable and Messenger for Plymouth, Christopher Wadsworth was "chosen constable for the ward of bownded between Jones River & Green's Harbour, and to serue the King in that office for the space of one whole yeare & to enter upon the place with the Gov^{r} elect."‡ In like manner and at the same time, Anthony Annable was chosen Constable for the Ward of Scituate. The *omission* of the name Duxbury in the first instance is interesting, for the omission implies that the locality bounded by Jones's River and Green's Harbor was literally a Ward of Plymouth, although there can be no doubt as to the identity of the place with Duxbury, which name, according to Justin Winsor, was bestowed in compliment to Standish, who settled in the above region, and whose ancestral acres in England were known as Dukesberry. "As early as 1630," says Winsor, "for facilities of pasturage and better planting, lands had been occupied in Duxbury, the people returning to Plymouth in the winter for better housing and ease of attending worship."§ In the Plymouth Colony Records, under the date 1632, we find a formal agreement on the part of Captain Standish, John Alden, Jonathan Brewster and Thomas Prince, to move back into Plymouth for the winter time, in order that they may the better repair to the worship of God.‖ In 1634 "a palisade was ordered to be made beyond the creek at Eagle's Nest, where Standish, Brewster and Paybody lived,"¶ and that same year a Constable's Ward was instituted in the above district.

* Plymouth Laws, 18. † Ibid, 19.
‡ Plymouth Col. Records, i. 21.
§ Winsor, Historical Account of Plymouth Colony and County, 5, in Plymouth County Atlas, G. H. Walker & Co., Boston, 1878.
‖ Plymouth Col. Records, Book of Deeds, 6.
¶ Collections of Mass. Hist. Soc., Second Series, x. 68.

The term "Ward," first used in designating Duxbury as a civic unit, is a very important connecting link between the Parish institutions of Old and New England. Wards are familiar enough in modern city politics, but historically City Wards were derived from Hundreds, each Ward being under a *Hundredes Ealdor* of *Aldermannus Hundreti*, and each Ward having subdivisions called Tithings or Precincts.* But Old English Parishes had also their Wards and Precincts, which were often synonymous with Vills or Townships. The Parish Ward was simply a Constable's Beat or District. The term Ward is derived from the Saxon *Weard* or Guard, and is closely connected with the ancient system of Watch and Ward, from which our modern police system has evolved. Both Watch and Ward were under the direction of a local Tithingman or Constable. The Ward was kept by day and the Watch by night. By the Assize of Arms (1252), for enforcing Watch and Ward, there were to be appointed in every Vill or Parish four or six men, according to the size of the place, who should watch throughout the night from sunset to sunrise, and if any stranger attempted to pass them, they were to arrest and detain him until the morning, when, if he could give a good account of himself, he was set free, but if he proved a suspicious character, he was handed over to the *Tun Gerefa* or Town Constable. If strangers would not allow themselves to be arrested, the aforesaid watchman levied the Hue and Cry upon them, that is, they raised the Town and pursued the fugitives with shouts and cries from Parish to Parish, until they were finally captured, *cum clamore et hutesio* (Hue and Cry) *de villa in villam, donec capiantur.*†

The ancient Plymouth records contain frequent allusion to "those on Duxborrough Side." In old English usage, a "Syde" was something more than the name would seem to imply: it was a district, an outlying quarter of the Town or Parish, but frequently an organic part of the same, like Fulham Syde of Fulham Parish. The Syde had its Sydeman,‡ whose duties were much the same as those of a Tithingman or Petty Constable. A Syde without a local officer was only a geographical idea. A Sydeman made the place a civic community. The term Side is not uncommon in the Towns of New England; for example, East Side in the Town of Woburn. The name frequently occurs as the designation of a particular neighborhood as lying on this or that side of the Town, just as we say "North End" or "North Part." Vills, like Sides in New England, are frequently

* Palgrave, English Commonwealth, i. 200; Thorpe, Ancient Laws and Institutes of England, ii., Glossary, "Hundredes Ealdor." According to Stubbs, in the North of England "the shires are divided into Wards, and to the south into Hundreds." Const. Hist. i. 96.

† Stubb's Select Charters, 371. See also Statutes of Winchester, 1285, for similar regulations concerning Watch and Ward, Stubbs's Select Charters, 473–4.

‡ In the 4 Jac. I., cap. v., we find penalties prescribed for the repression of drunkenness, and the presentment of offenders is made one of the duties of "Constables, Churchwardens, Headboroughs, Tithingmen, Alecunners and *Sydemen*."

mere localities without any organic life, although the Vill is usually more personal, for example, *Kellogg*ville, whereas the Side is more geographical, taking its name usually from some point of compass. But a Side or a Vill without a Constable has no civic existence in the Common Law.

We must regard Duxbury Side as a Vill or Parish of Plymouth until June 7, 1637, when it was recognized as an independent, self-governing "township"* by the General Court. A church, or chapel of easement, was established on Duxbury Side as early as 1632, but the existence of a Church does not constitute a Parish according to the Common Law. The Parish is a civil institution both in origin and history. The only fact which gave Duxbury, in 1634, a legal existence as a Vill or Parish within the Town or larger Parish of Plymouth was the election in a Plymouth Town Meeting of a Constable for that Ward. As a Church-society Duxbury enjoyed neither unity nor pastoral headship for several years after her first settlement. Many of her leading citizens continued to attend church at Plymouth, and there was no regular minister in Duxbury until 1636.† But the presence or settlement of a minister does not make a Parish. In point of law and in point of fact, however, Duxbury was a Parish unit from the moment Christopher Wadsworth was chosen Constable for a Ward‡ of Plymouth bounded by Jones River and Green's Harbor.

For several years after 1634 Constables for the Wards of Duxbury and Scituate continued to be chosen in Plymouth Town Meeting. For instance, it was agreed January 1, 1635, that Christopher Wadsworth and Anthony Annable, Constables of Duxbury and Scituate, should continue in their places another year.§ The practice of electing Constables in the presence of all the freemen of the colony appears to have gone on for several years after the recognition of Duxbury and Scituate as independent self-governing Towns, but we are inclined to suspect that, from the very beginning of constabulary elections, the candidate was nominated by the neighborhood or precinct which he was appointed to govern. In 1645 we find "constables chosen by the severall townships and presented to this court and sworn."‖ Plymouth and Scituate then had two Constables each; Duxbury, Sandwich, Marshfield, Barnstable, Yarmouth,

* Plymouth Col. Records, i. 62. Cf. ii. 31, for an interesting case where "eich *side* of the towne, viz. the Eele Riuer and Joames Riuer shall for eich *side* bring six musketts wth shott, pouder, and the towne of Plymouth other six euery Lord's day to the meeting with their swords and furniture to euery piece, ready for service if need require."

† Clark, Historical Sketch of the Congregational Churches in Massachusetts, 15. Winsor, History of Duxbury, 171.

‡ The use of the term "Ward" for a germinant town was very general throughout Plymouth Colony. Constables were always sworn to serve in such and such a Ward (Laws, 10), always corresponding to a local settlement or Plantation; for example, "the ward of Barnstable" (Plym. Col. Rec., i. 137). One of the most interesting cases is the "Ward of the River Kennebecke" (iii. 59), the Pilgrim trading-post. This ward was something like the Constables' Beats along the rivers of Alabama.

§ Plymouth Col. Records, i. 33. ‖ Ibid, ii. 88.

Taunton, Rehoboth, each one Constable. In 1652 the Constables of Sandwich, Yarmouth and Eastham were allowed "to be sworne at home."* Thus gradually the Towns of Plymouth Colony settled back into old English Parish usages of electing and qualifying their own Petty Constables, just as these same towns gradually became known under good old English names, although for the most part planted in old Indian localities, and at first designated as such.

The process of reproducing the Parish institutions of the mother country could not have been entirely an unconscious one with the settlers of Plymouth Colony. Constabulary oaths expressing loyalty to the King prove that the colonists still felt themselves English subjects and under the sovereignty of English law. The correspondences between the local institutions of Plymouth and those of old England, are too striking to admit of other interpretation than conscious imitation. In the prefaces to their Law books, the Plymouth legislators confess that they did not reject such of the laws of their native country "as would conduce vnto the good and grouth of soe weak a begining—as any Impartiall eye Not forstaled with prejudice may ezely deserne."† The Plymouth lawgivers even re-instituted Tithings for the government of the Indians by a system of Frank Pledge. As the conquered Saxons, living under Norman lords, were held to right in their own villages by a system of Tenmentale under their own elected Tithingmen, so the Indian villagers were bound to keep the peace in groups of ten, each group under the charge of an Indian Tithingman, whose duty it was to "take the inspection, care, and oversight of his nine men and present theire faults [and] Misdemenors to the overseer,"‡ who was appointed by the Governor. The white overseer and the Indian Tithingmen appointed Indian Constables, holding office for a year, whose duty it was to attend the courts kept among the Indians for the purpose of "ciuilliseing"§ them, and to execute the warrants of the Overseer. If an Indian servant of a white man ran away into an Indian neighborhood, the Indians with whom he took refuge were bound by law to give immediate "notice of the said Runaway to the Indian Constable who shall imediatly apprehend such Indian servant; and carry him or her before the Overseer or next Majestrate, whoe shall cause such servants to be whipt; and sent home by the Constable to his or her master whoe shall pay said Constable for his service."‖

It was required by law that "in every Constablerick there be a paire of stocks and a whipping post erected. Also a cage w^{ch} shall be of competent strength to detaine a prisoner, & these to be erected in such places as shall be thought meet by the severall neighborhoods where they concerne, vpon the penalty of X s. for any towne-

* Plymouth Col. Records, iii. 8. † Ibid, Laws, 72.
‡ Ibid, 253.
§ Ibid, 239. Courts were held also among the Indians of Massachusetts. Mass. Col. Rec., ii. 188.
‖ Ibid, 255.

ship w^ch^ shalbe defectiue herein."* Such local institutions as the Town Cage,† the Parish Stocks, the Whipping Post, and a Constable to superintend whippings, cannot be explained as indigenous to New England, for they are the common inheritance of all English colonies in America. One Parish custom in particular clearly allies the Towns of Plymouth Colony with Old English Parishes, and that is the method of dealing with Tramps. By a law of 1661, reënacted in 1663, it was ordered by the General Court of Plymouth, that "if any person or persons shall come into this Gouvernment, that *according to the law of England* may justly be accounted vagabonds; the *Marshall* or the Constable of the Towne wherevnto they come, shall apprehend him or them; and vpon examination soe appeering; hee shall whip them or cause them to be whipt with rodds; soe as it exceed not fifteen stripes; and to give him or them a passe to depart the Gouvernment, and if any such person or persons shalbee found without theire passe; or not acteing according therevnto they shalbee punished again as formerly."‡

The above regulation was first revived at Plymouth, not by Statute but as a part of English law, for as early as 1641 we find that Jonathan Hatch was taken as a vagrant, and for his misdemeanors was censured to be whipt, & sent from constable to constable to Leiftennant Davenport at Salem."§ How minutely this procedure corresponded with old English Parish usage may be seen by examination of Lambard's Duties of Constables, where it is said to be incumbent upon the Constable, Headborough, or Tithingman of the Hundred, Parish or Tithing, to arrest every Rogue and publicly whip him upon the bare back until it be bloody, and then send him from Parish to Parish, by the officers of the same, until the Rogue come to the place where he was born; but if that place is not known, then to the Parish where the Rogue last dwelt for a whole year; and if that also is unknown, then to the Parish through which the Rogue last passed without receiving a flogging.‖ Such a vigorous policy would probably exterminate the modern Tramp.

The law against vagabonds was applied with considerable severity to strolling Indians. It was enacted by the General Court that no Indian should remove from one place or "plantation" to another without a permit in writing from his "overseer," declaring whither he was going, for what reason, and how long he was going to stay. If any Indian was found without his pass, he was arrested by the Constable of the place into which he came, taken before "the next overseer," who made the Indian pay a fine of five shillings "or be

* Plymouth Col. Records, Laws, p. 11, 95 circa 1636.

† Cages were set up in the market places of the larger towns in Massachusetts. Mass. Rec., v. 133.

‡ Plymouth Col. Records, Laws, 206.

§ Plymouth Col. Records, ii. 36.

‖ Lambard, Duties of Constables, 45–6. Compare with Lambard's Eirenarcha, 204. The English Statutes are full of legislation regarding Rogues, Vagabonds, and Sturdy Beggars, e. g. 7 James I. cap. 4.

whipt and sent home to his owne place." If there was no local "overseer" of Indians in the place whither the vagabond came, then "the English Constable in that Towne" discharged the above office.* If Indians were found drunk in any "Township," they were taken by "the Constable of the Towne and sett in the stockes."† By another law, the penalty for the first offence was five shillings "or be whipt;" for the second, ten shillings "or be whipt; and soe for euery time any of them shalbe convicted of drunkenes before any Court, Majestrate, ouerseer, tithingman or English Constable."‡ The judicial functions of old English Parish officers are here revived. It is noteworthy that the first Selectmen of Plymouth Colony had judicial duties.

The close connection between Petty Constables and Tithingmen in Plymouth Colony is evident from the coëxistence of these institutions in the regulation of Indian Tithings and Indian villages, and from the fact that, in early Plymouth Towns, Constables discharged the Sunday duties, which, in later times, were usually associated with the office of Tithingman, although, as we have elsewhere shown,§ the Tithingman in early New England was by no means a mere Sunday Constable or ecclesiastical whipper-in, but *the head-man of a neighborhood of at least ten families*, as in Saxon England. From the laws of Plymouth Colony we learn that great abuses had arisen in sundry Towns by reason of certain persons behaving themselves profanely on the Lord's day, staying out of Meeting, playing, jesting, and sleeping in the vicinity of the Meeting House. The Constables were instructed to take notice of such persons and to "sett them in the stockes." The Constables were also to prevent "vnessesary violent ryding on the Lord's day."‖ All these peculiar customs originated, not with the Pilgrims or Puritans, but in the Parishes of Old England.

The reproduction of constabulary institutions in the Massachusetts Colony we cannot notice in detail, but the process was immediate, and even more perfect than in Plymouth Colony. At the third Court of Assistants held at Charlestown September 28, 1630, John Woodbury was chosen Constable of Salem, and Thomas Stoughton Constable of Dorchester. At a Court held three weeks later, Constables were appointed for Charlestown, Roxbury and Watertown.¶ It is not likely that these colonial appointments were anything more than the confirmation of existing officers and of candidates presented

* Plymouth Col. Records, Laws, 254.
† Ibid, 140. ‡ Ibid, 253.
§ "Tithingmen," Proceedings of American Antiquarian Society, New Ser., vol. i. Part 3.
‖ Plymouth Col. Records, Laws, 214, 224. Compare the Sunday duties of Plymouth Constables with those of the Salem Constables, see extract from MS. Town Records, 1676, in Osgood and Batchelder, Sketch of Salem, 17: "three constables are to be at the three great doors of the meeting-house and allow none to go out till all the exercises are finished. All the boys are to sit on the three pair of stairs in the meeting-house, including those of the pulpit. One constable is to keep the dogs out of the meeting house." This office reminds us of the Dog-Whipper in English Parishes.
¶ Mass. Col. Rec., i. 76, 79.

by a local constituency. John Woodbury, who "did now [in 1630] take the oath of a constable," was the old planter who had been sent as *messenger* to England in 1626 by Roger Conant and his companions. In 1628, before Captain Endicott came over, old Naumkeag had levied a local tax* of £1 10 shillings, in payment of an assessment made by Plymouth colony for the expenses incurred by Captain Miles Standish in arresting Morton at Merry Mount and in sending the rogue back to England. Who more likely to have collected and paid over this tax than faithful John Woodbury? In 1629 Gov. Endicott received orders from the Massachusetts Company to "appoint a carefull and dilligent overseer to each family."† With the adoption of this system, which is the first approach in New England to the old English system of Tithingmen, it is highly probable that some *one* family overseer should have had superior authority over all the rest, just as did the "overseer" appointed by the Governor of Plymouth colony, over the Indian Tithingmen throughout Plymouth towns. Governor Endicott was distinctly instructed‡ by the Massachusetts Company to look into the workings of his government by families, and, if need be, to make an example of offenders; "otherwise," said the Company, "your government wilbe esteemed as a scarcrow." Correction, they added, was ordained for the fool's back. As a wholesome warning to offenders, "a house of correction" was to be instituted. Endicott had authority to inflict punishment according to the nature of the offence and the laws of England. Public whippings and commitment to a lock-up or house of correction imply the existence of a Constable. When, therefore, we find Captain Endicott at the Court of Assistants, September 28, 1630, nominating John Woodbury as Constable for Salem, we are inclined to think it was merely for the sake of confirmation under the new government, and that John Woodbury was already quite familiar with constabulary duty.

Let us now sum up in brief the more important functions of Petty Constables as reinstituted in New England. The following enumeration is drawn from the laws of the Massachusetts Colony, but what was true of the local institutions of that Colony is true to a great extent of other New England Colonies. Every one of the following duties has its old English prototype: a Constable had power to "whipp & punish" or to provide for the same; to send or convey persons "from connstable to connstable;" to "speede away all hues & crys" against thieves, robbers, murderers, manslayers, peacebreakers, on penalty of forty shillings in capital cases; to apprehend without warrant all persons "overtaken with drincke," all profane swearers, Sabbath breakers, vagrants, night-walkers; to search for

*Morton, New England's Memorial, (ed. 1826), 142; Gov. Bradford's Letter Book, 1624–30, in Collections of Mass. Hist. Soc. 1st series, vol. 3, p. 63.

†Mass. Col. Rec., i. 400.

‡Massachusetts Col. Records, i. 393, 397, 400, 401, 405.

such persons in suspected or disorderly places and in houses licensed to sell beer or wine; not to apprehend by order of magistrate without a warrant; to warn any person to assist him, and none to refuse on penalty of ten shillings; to "carry his black staffe" in execution of his office that none may plead ignorance; to take notice of "common coasters, vnprofitable fowlers, & other idle persons, & tobacco takers—and of such as harbor any young people, children, servants, apprentices, students or schollers," without hastening them to their respective employments; to aid custom house officers in the search for wines, by breaking open cellars, &c.; to levy all fines and "gather all toune rates;" to clear accounts with the "countrje Tresurer;" to register in a book all lost goods or strays and to cry the same at "three generall toune meetings or lectures;" to present the names of all persons refusing "to watch & ward;" to begin "the constables watch" annually on the first of May and not give over until the last of September; to see that the watch be of "sufficijent able men, & not youths;" to secure or commit "any inhabitant or stranger after tenne of the clocke at night, behaving themselves deboist,"* and not giving a good account of themselves to "ye constable or watchman," the Constable to carry them before a magistrate the next morning; to provide "at the tounes charge" all weights and measures required by law for "toune standards," and, upon warrant from the "toune sealer" to warn all inhabitants to bring in their weights and measures to be tried and sealed; to serve all attachments as may be directed in any civil case; to "warne the freemen of theire toune in the 2d week of March annually to mete together;" to make return under their hand of the names of deputies; to pay the Marshal General three pence out of every attachment that may be served; to execute warrants for the choice of jurymen, and to warn the persons chosen; in case of the untimely or unnatural death of any person, to "summon a jury of twelve discreete men" to inquire into the cause and manner of the death; to give warning unto the inhabitants of their town of husbands living apart from their wives; not to refuse the office of a Constable being orderly chosen thereto under penalty† of five pounds, and if in Boston, ten pounds; "in case of any servants running from theire master, or inhabitants going privily away, with suspition of the intention, in ye absence of a magistrate, the connstable and two of the cheife inhabitants is to presse men, boates and pinnaces, at the publique charge, to pursue such persons by sea or land, & bring them

*Deboist, perhaps from the past participle of "debosh," an old English corruption of debauch, to be found in Beaumont and Fletcher.

†In Old England penalties were everywhere in vogue for refusing local offices. Lambard gives abundant examples. It was regarded as a duty for the best men in the Parish to serve in the office of Constable, and that by a system of rotation, not indeed for the sake of spoil, but in order that the burden of the office might be shared by all. We have as yet found no English precedent for the town policy of Ashby, Mass., which from 1811 to 1835, sold the office of Constable to the highest bidder. See Drake, S. A., Hist. of Middlesex County, i. 225. And yet military offices used to be sold in England.

backe by force of armes;" to inform the Court of all new comers who settle themselves without license.*

This remarkable list of duties, which we have given in the very language of the original laws, comprises, together with the control of Highways and Bridges, the chief substance of constabulary duty in early New England. By comparing this list with that given in the Humphrey manuscript-warrants of constabulary duty issued in Old England, it will be seen that the early English institution was reproduced in every essential detail.† The original object of Massachusetts in proclaiming its constabulary law was that "each connstable may vnderstand his duty." The object of the English warrants was to give the "Articles to be diligently enquired of—by the Petty Constable & Tithingmen in euery parish, town, & hamlet." This spirit is very different from the degenerate conception of Constables entertained by Blackstone, who says of constabulary power, "considering what manner of men are for the most part put into these offices, it is perhaps well that they are generally kept in ignorance." Our Forefathers in England and New England made their best men Constables and Captains of Militia, and clothed both offices with dignity and honor. Historically the one office is as honorable as the other, for Constables and Commanders of the Militia were in ancient times one and the same. Militia Captains represent more fully perhaps the survival of the original constabulary spirit, the idea of armed force, which is the foundation and defence of all civil institutions.

But Constables, in their civil capacity, are also cases of historic survival. Every one of the powers enumerated above, however ignorant the modern Petty Constable may be of their full significance, links the communal life of to-day to its Old English beginnings. Every item of constabulary duty is an assertion of a fundamental principle in civil society, the sovereignty of the community, of the *salus publica*, over the individual. The Constable represents the organized force of the State or Commonwealth. The

* Mass. Col. Records, iv. Part I., 324–27. Cf. ii. 150–1. See also Laws of the Colony and Province of Massachusetts Bay (1814), 82–84, and the recent edition of the Acts and Resolves of the Province of Massachusetts Bay, under "Constables." Public Statutes of Massachusetts (1882), "Constable." We have examined the Colonial Records of Connecticut, the New Haven Colonial Records, and the Records of the Colony of Rhode Island and Providence Plantations, as well as those of Plymouth Colony, but have nowhere found so complete an exhibition of constabulary duty as that given in the first citation of the Col. Records of Massachusetts. In the last edition of the Public Statutes of the Commonwealth of Massachusetts (1882) may be found certain cases of survival, such as the power of requiring aid in cases of escape (217, 239), and the duty of enforcing the law against Sabbath-breaking and profane swearing.

† For other means of comparison between constabulary duty in New England and Old England, see Lambard's "Duties of Constables," and Wilcox's "Office of Constable, comprising the laws relating to High, Petty and Special Constables, Headboroughs, Tithingmen, Borsholders and Watchmen, with an account of their institutions and appointment." This is an English book based upon Lambard and published about 1827, republished in Philadelphia, in 1840, by John S. Littell, in the so-called "Law Library." There are some interesting remarks upon Constables in *The Nineteenth Century*, Feb. 1881, by Henry A. Blake, on "The Irish Police." He says, "Everything in Ireland, from the muzzling of a dog to the suppression of a rebellion, is done by the Irish constabulary."

entire strength of the People, the whole weight of the Common Law, the accumulated force of civic experience and institutional history, may be brought to bear in the restraint of violence and in the keeping of the public peace by constabulary power. Consider what was represented by the "black staffe" which the Constables of early New England carried in the execution of their office, that none might plead ignorance. It was a black staff, "about five foote, or five & a halfe foote long, tiped at ye upper end, about five or six inches, with brasse."* This Tipstaffe was something like the Black Rod still borne by the Gentleman Usher of the English Parliament, when he taps at the door of the House of Commons and summons them to the bar of the House of Lords. The black staff of the New England Constable was "provided by ye towne" as a symbol or badge of office. We find mention of the Black Staff in the Town Records of Salem and Groton.† What did this emblem signify historically? It meant the approach of royal authority or of the sovereignty of the Commonwealth. Among the East Saxons it was customary, once a year, to carry the Wardstaff of the King, which represented his person, from Hundred to Hundred, from Manor to Manor, and from Parish to Parish, as a token of the entrance of the King's peace. Wherever the Staff came, borne by the Bailiff of Ongar Hundred, tenants and land-owners kept watch with the sacred emblem over night "until the sunne arrising," so that "the King be harmless and the countree scatheless." In the morning the Lord of the Town or Manor repaired to the Wardstaff, and, in the presence of all the Watch, scored thereon a notch as a token of loyal service done that year. Then the Staff was delivered again to the Bailiff and sent on to the Lord of the next Town or Manor, with a message in verse called the "Tale of the Wardstaffe," ending with these words:

"Sir, by leave, take this Staffe,
This is the Tale of the Wardstaffe."

And thus through all the Towns and Hundreds of Essex, the willow staff was borne until it came to Atte Wode, where it was thrown into the sea.‡ With some such ceremony perhaps the Constable's Tipstaffe was early associated as symbolizing the presence of the King. Possibly the local keepers of the King's peace simply touched the Wardstaff with their own staves, thus deriving a certain measure of royal authority. It was certainly the custom in the Hundreds or Wapentakes of the North of England for the chief men of the district to recognize the authority of the Hundredman by touching

*Mass. Records, ii. 151; iv. Part I. 325. Constables "acting from their oune authority" were required by law to take with them their black staves in the execution of their office; but when armed with a warrant they might carry their Tipstaffe or not, as they pleased, see v. 29. Items concerning the use of this ancient emblem may also be found in the Acts and Resolves of the Province of Massachusetts Bay, e. g. i. 155.

†Salem Town Records (Historical Collections of Essex Institute, Second Series, vol. i. 147): "two blackstaues of sixe foot long or thereabout be provided for ye Constables, & Ed: Batter to speak to ffran: Perry to haue them made." S. A. Green, Early Records of Groton, 19: Item "toe black staffe —— 0 3 6."

‡Palgrave, English Commonwealth, ii. clviii.–clxii., "Tale of the Wardstaff."

his lance with their own weapons in a public assembly.* If we may believe Herbert Spencer, the idea of royal sceptres developed from the chieftain's spear, and "the spears borne by subordinates, symbolizing their deputed authority, gradually changed into staves of office, batons of command, and wands."† The Old English Tipstaffe was the legal badge of office for both Constables and Tithingmen in the Massachusetts Colony. In the Plymouth Towns every Constable was required by law to have "a constables staffe" to distinguish him in the discharge of his office, and to be delivered to his successor as a symbol of the transfer of power.‡ These Tipstaves have continued in use in many New England Towns down to a very recent date. We remember to have seen within a few years at Amherst College Commencements, held in the old Parish Meeting House, a force of special Constables employed to seat the "congregation," and bearing black staves as an emblem of their official authority. An æsthetic transformation of ancient custom may be seen at Smith College Commencements, Northampton, where young ladies acting as ushers carry tasteful wands, tipped, not with brass, but with ribbon, and where the only vestige of constabulary duty is a male professor, who stands on guard.

Perhaps the most remarkable feature of ancient constabulary power as perpetuated in New England down to the present day, is the power to "speede away all hues & crys"§ against thieves, robbers, murderers, and breakers of the public peace. This power connects New England Towns most intimately, not only with Old English Parishes but with Saxon Village Communities. In the early middle ages the Hue and Cry was a terrible means of executing justice. It let loose an entire village, like a pack of wolves, in pursuit of an out-

* Laws of Edward the Confessor, xxx. (Thorpe, Ancient Laws and Institutes of England, i. 455). Everwichescire, Nicholescire, Notingehamscire, Leicestrescire, Norhamtunescire, et usque ad Watlingestrete, et viii. milliaria ultra Watlingestrete, sub lege Anglorum. Et quod alii vocant hundredum, supradicti comitatus vocant wapentagium, et hoc non sine causa: cum enim aliquis accipiebat prefecturam wapentagii, die constituto, conveniebant omnes majores contra eum in loco ubi soliti erant congregari, et, descendente eo de equo suo, omnes assurgebant contra eum, et ipse erigebat lanceam suam in altum, et omnes de lanceis suis tangebant hastam ejus, et sic confirmabant se sibi. Et de armis, quia arma vocant wappa, et taccare, quod est confirmare.

† Herbert Spencer, Ceremonial Institutions, 177. In Hazlitt's edition of Blount's Tenures of Land and Customs of Manors, p. 80, is a very curious allusion to the Tithingman's wand. "The Tithingman of Combe Keynes is obliged to do suit at Winfrith-court; and after repeating the following incoherent lines, pays threepence, and goes out without saying another word:

With my white rod,
And I am a fourth post,
That threepence makes three,
God bless the King and the lord of the franchise;
Our weights and our measures are lawful and true,
Good-morrow, Mr. Steward; I have no more to say to you.

On default of any of these particulars the court leet of Combe is forfeited."

‡ Plymouth Colony Records, Laws, 122; Brigham's edition of Plymouth Laws (1836), 266. "Every Constable shall have a Black Staffe tipped with Brasse, as a Badge of his office, which as he hath opportunity, he shall take with him when he goeth to discharge any part of his office, yet notwithstanding, the want of his staffe shall not hinder him from executing his office in any kinde, if occasionally he be without it, nor exempt any from assisting him therein that may know him to be the Constable."

§ Mass. Col. Records, Iv. Part I. 324.

law or fugitive. Every man called upon by the Reeve or Tithingman was obliged to leave work or repose and join the human hunt. When the Hue and Cry reached the next village, the head man of that place was obliged by the law of the Saxons to summon his villagers and *speed away*. The whole Hundred and the whole Shire were thus quickly aroused, and woe then to the wretched outlaw. The country was filled with human hounds thirsting for his blood. It is fearfully significant of the immense power invested in the early New England Constable that he too could raise the old Saxon Hue and Cry, "by foote, & if need be, by horse,"* in hot pursuit of all capital offenders. In the King's name the Constable could raise the Town and compel all men to join him in the pursuit of a criminal. Not even the Selectmen could refuse his call for aid, under penalty of the law.† And to this day the Petty Constables of New England have the same old power. Should it become necessary, the lowly officer of any obscure hamlet could assert, like the High Sheriff‡ of a County, the authority of the Commonwealth and command all the men in his neighborhood to join him in the preservation of the peace. Petty Constables have the power of the State behind them, and rely upon it. We have seen a crowd of men called upon by a Parish Constable to aid him in arrest. The familiar cry of "Stop Thief!" if raised by a Petty Constable, converts all persons who hear it into a constabulary band, or regular Hue and Cry to chase the offender. With a warrant issued in due form, a Petty Constable may pursue a criminal by foot or by horse, by railroad or telegraph, from Town to Town, from County to County, and may "apprehend him in any place in the Commonwealth."§

In these modern times of civic order and well-regulated peace, the iron hand of Law is seldom laid with its full force upon a transgressor. Constables occasionally serve a writ, or arrest a vagabond "overtaken with drincke," but the chief duty of their office now appears to be that of attending to their own private concerns and ignoring the pranks of small boys. The Constable may be a quiet, unobtrusive man, but he still represents the majesty of Law. There is latent power in the constabulary office, as in all our homely local institutions. The authority of the Townsmen sometimes sleeps, but it is a lion sleeping before the gate of a citadel. The young lions of liberty play fearlessly within the reach of Law, and still the lion sleeps. But let an enemy approach from without, or a traitor come forth from within. Behold, a lion stands in the way. There is a lion in the street.

* Mass. Col. Records, ii. 182. † Ibid, ii. 150.
‡ Public Statutes of Mass. (1882), 217, 239.
§ Herrick, Town Officer (1870), 144. Public Statutes of Mass. (1882), 239.

Addendum.

Hog-Reeves or Hog-Constables.

In many old Towns in New England, for example in the ancient Town of Plymouth, there is a surviving type of a local officer, which is more primitive than the office of Tithingman or Petty Constable. Before there were keepers of the village-peace in the Saxon sense, there were keepers of swine which roamed tribal domains. Before nomad chieftains had stables and hostlers, they had their flocks and herds and droves of swine, all with appointed herdsmen. Although doubtless every chief had his servants trained for tribal defence, as did Abraham his three hundred and eighteen men,* yet pastoral institutions, like the herdsmen of Gerar who strove with Isaac's herdsmen,† carry us back to a more rudimentary stage of society than a numerically organized martial Host, like the Hundreds and Tithings of the Saxons when they occupied Britain. In fact the invading Saxons brought with them, in all probability, ideas of older institutions than Hundredmen and Tithingmen, in short primitive, more or less servile institutions, inherited by their ancestors from the high pasture-lands of Asia, and connecting our Aryan race with all pastoral peoples, if not with primitive savagery. Among those institutions was that one of which Scott has given us a graphic description in the person of Gurth,‡ the Saxon Swine-Herd, who in the upland pastures of the West Riding of Yorkshire represented not merely the survival of primitive Saxon speech, but the survival of a primitive pastoral office. In fact Scott calls him a second Eumæus, who was the Swine-Herd of Odysseus. In Saxon England Swine-Herds were a very necessary institution. Swine were so numerous in the days of King Edgar that he was obliged to proclaim a law to the effect that no animal of this species should be allowed to enter Church if it could possibly be hindered.§ Hog-Reeves and Dog-Whippers were stationed at cathedral doors in time of service to prevent profane intrusion. The function of dog-whipping was handed on to New England Tithingmen and Constables, who sat at the doors of the Meeting-House to keep out dogs and keep in boys. Hogreeves were almost everywhere instituted in our early Towns.

In New England the very first liberties specifically granted to Towns were concerning the herding of cattle and swine, and the regulation of fences and common fields. In the colonial records of

*Genesis, xiv. 14. †Ibid, xxvi. 20; cf. xiii. 7.

‡Scott, Ivanhoe, chap. i. "One part of his dress . . . was a brass ring resembling a dog's collar—soldered fast around his neck, so loose as to form no impediment to his breathing, yet so tight as to be incapable of being removed, excepting by the use of the file. On this singular gorget was engraved in Saxon characters, an inscription of the following purport: 'Gurth, the son of Beowulph, is the born thrall of Cedric of Rotherwood.'" Rotherwood is an old name designating a place for Rother-beasts (from the Saxon hrudher, mod. Ger. Rind). The term was usually applied to cows and oxen. Rother-beasts are mentioned in the 3 and 4 Edward VI. Rother-beasts were brought over to New England, see White's Planter's Plea, in Young's Chronicles of Massachusetts.

§ Thorpe, Ancient Laws and Institutes of England, ii. 251.

Massachusetts we find resolutions like the following: "Euery towne shall haue liberty to make such orders aboute swine as they shall judge best for themselues."* Towns were ordered to choose yearly "some one discreet person, who shalbee called the hogreeve,"† who had power to seize all "wild swine," going without a keeper, without yoke or tethering line, or some means of restraint. Swine were often allowed to run at large if properly yoked or ringed.‡ It is rather surprising to one familiar with the open lawns and beautiful streets of Stockbridge, the model town of Berkshire, to find in its original Town Records repeated entries like the following: "Voted, that the hoggs be yoked and run at large by the 15th of April next."§ In Stockbridge the Hogreeves, as indeed all Town Officers, with the exception of Moderator and Town Clerk, were originally Indians. The Town Records are full of strange, uncouth Indian names, which appear all the stranger from their combination with Old Testament or Christian names; for example, Jehoiakim Nau-naum-pe-tonk, Constable; David Nau-nau-nee-ke-nuk, Tithingman; Jacob Naunauqhtaunk, Hogreeve; Solomon Waunaupaugus, Peter Popgunaupeet, and John Konkapot, Selectmen. We find "hog constibls and fens uewers" in the Early Records of Groton, recently edited by Dr. Samuel A. Green with careful reference to historical orthography. The variety of ways in which Groton Town-Clerks contrived to spell‖ the same office is marvellous to behold. Evidently, like General Jackson, they despised a man who could spell a word in only one way.

The election of Hogreeves is still kept up in many old New England Towns. The conferment of that office at the annual Town-Meeting is now regarded as a kind of municipal joke. Almost invariably the honor is given to persons who are least likely to appreciate it, for example to newly married men. In the town of Plymouth a rising young lawyer and a Harvard graduate, soon after his marriage, was dignified by his fellow townsmen with the venerable office of Hogreeve. In a Western Massachusetts Town we have heard of a popular minister who was elected Hogreeve by the unanimous vote of his parishioners. He retaliated in a little speech, saying that he had always supposed that he had been invited to that town as a shepherd of the sheep, but he was now surprised to learn that it was really as keeper of quite a different sort of animals.

*Mass. Records, i. 119; cf. i. 110, 86, 87; Plymouth Col. Records, Laws, 15, 25, 27, 32.

†Mass. Records, i. 182. In Groton, Mass., there were Swine-Herds and Overseers of the Swine. See Green, Early Records, 114, 115, "Swinerd."

‡Green, Early Records of Groton, 48, 108; Town Records of Salem, 64, 68, 85, 130, 143, 152.

§MS. Town Records of Stockbridge, March 15, 1748.

‖Green, Early Records of Groton, 88; cf. 90, "Constibll;" 98, "Constabelle;" 99, "cunstabell;" 108, "fenc fuer;" 115, "fence ueers;" 116, "fenc uewer."

Documents defining the Duties of Constables.

18 Somerset Street, Boston, Mass.,
Sept. 15, 1881.

H. B. Adams, Esq.,

Dear Sir: Jonas Humfrey,* of Dorchester, the ancestor of the family (Humphrey or Humphreys) in that town, arrived in "1637," on "the 9th of September."† The next day, as appears by the Dorchester Town Records, he bought the house, home lot, and other lands of William Hannum.‡ This home lot has been in possession of the family to the present time, and is now owned and occupied by Deacon Henry Humphreys, of the seventh generation in descent from Jonas,§ who was, according to tradition, a constable in Wendover, co. Bucks, England, before coming to this country. Tradition further states that he brought with him two original papers in which the duties of a constable are set forth very explicitly, in twelve articles. The first document sent you with this, I carefully copied from one of those papers. The second was transcribed from a manuscript copy. The original of the latter I saw and made a fac-simile of more than thirty years ago. I am sorry to say that both the original and the fac-simile are now missing.

Yours truly, William B. Trask.

To the Constables of Wendouer Burrough cum fforence‖ and to eu'y of them

These are in his Ma^{ts}: name to will & require yo^{w} to giue notice of these Articles hereunto annexed to the Church wardens & ou'seers of y^{e} poore of yo^{r} pish and that both you and the said Church wardens and ou'seers doe bringe vnto his Ma^{ts}: Justices at the Red Lyon in Wendouer on Wednesday the 27th. of this Instant Moneth of June by Eight of the Clock in the forenoone their Presentm^{ts}: according to each Articles as they shall belonge to their seu'all offices And farther that Yo^{w}: doe certifye to his Ma^{ts} Justices exactly w^{t}: Alehouses are licensed and W^{t}: vnlicensed wthin yo^{r} lib'ties Strictly enioyning all the said Alehouse keepers licensed and vnlicensed not to fayle to be before his Ma^{ts}: Justices at the same tyme and that wth the aduice of the minister & some three o^{r} fower of the most Substantiall Inhabitants yo^{w} doe certifye vnto them what number of Alehouses are fit to be licensed in you^{r} pish and what psons are fittest to keepe them and alsoe that you certifye to them what psons there are that doe vsually vent & sell Tobacco by retayle in yo^{r} towne & of their fitnesse soe to doe, together wth the names of such othe^{r} psons as you shall thinke fitt to be admitted to vse that trade together with the trade w^{ch} they now vse And farther that you keepe a diligent and strict Warde by daye & Wacth by night and that you doe vpon Tewsdaye the 26th of this Instant June take wth you sufficient

* See History of Dorchester, 101, 124.

† Manuscript of the late Deacon James Humphreys, who died in Dorchester, July 13, 1845, aged 92 years.

‡ See Fourth Report of the Record Commissioners, Boston, 1880, page 24.

§ *Clapp Memorial*, xvii., 274, 275.

‖ "The parish of Wendover includes the Borough and the Forrens, the latter being that portion, within the limits of the township, which was not entitled to burgage privileges." *Ibid*, xvii.

ayde and make a priuate & dilygent search w^th^in yo^r^ libertyes fo^r^ Rogues vagabonds and idle persons & that yo^w^ bringe before his Ma^t^^s^: Justices to the place aforesaid on the sayd 27^th^ day of June all such of them as shall seeme sturdye dangerous and incorrigible and that yo^w^: doe punish & send away accordinge to law all such as are not dangerous & incorrigible and that yo^w^: be then & there p^r^sent to giue a strict accompt of the due execution hereof fayle not dated this 20^th^ day of June 1632:

ffrom S^t^ Leonards p me W^m^ GRAUNGE

You and the Church wardens remember to pay the q'teridge fo^r^ the kings bench Marshalseys and mayned souldyers to me on the Day abouesayd at yo^r^ towne.

Warrant—Bucks.—

Articles to be diligently enquired of and distinctly & particulary answered unto in writing by the high Constables within every hundred, and by the petty Constables & Tithing men in euery parish, town & hamlet, at the assises to be holden for the Countye of Bucks.

1. You shall enquire of and truely report the name of all Popish recusants in your parish who do forbeare to repaire to the Church according to the law. The names of men & women or dame of the familye, The names of the servants by their surnames & names of baptisms, the names of all Schollmasters And you shall certifye the names of all } Who do not ordinarily resort to the Church such persons, as make or resort unto any pryvate Conventicles, or meetings, under colour of exercise of religion.

2. You shall present the names of all such, as doe not resort to devine service every sunday according to the law, & Certifye, whether the 12^d^ forfeyted be required & received and duely imployed for the poore; of whom it hath been levied & of whom neglected.

3. You shall certifye, what felonyes have been comited within your towne & parish, which have come to your knowledge; against whome, of what kind & nature, & who hath prosecuted the same; & if any robberyes since the assises last past have been committed, you certifie whether hue and cry have been made, and the same have been duely pursued by horsemen & footmen, or in whose default, or by whose negligence the same hath fayled to be duely pursued, & also whether watches have been duely kept for the apprehension of fellions or vagrants, or by whose default the same have been neglected.

4. You shall Certifye, what vagrant persons have been apprehended within your parish since the tyme aforesaid, and what lett pass not apprehended, or not punished; who have been sent to the house of correction, when & how they have been delivered from thence; & by whose negligence same hath happened, & who have relieved such vagrants with meat, drink, or lodging.

5. You shall enquire & certifye what cottages erected, by whom, & by whose meanes contrary to the statute of 3^d^ Eliz. & what inmates intertayned, & by whom.

6. You shall certifye how many tavernes, innes, alehouses, & typling houses their are in the parish, who keep the same, how long they have

kept them, & which of these alehouses are licensed, and which not, & in what places their houses stand, & whether they sell ale or beere according to the assise or not; which of these innes intertayne neighbours as alehouses; who hath been drunk within the parish since the last assise, & in what inne or alehouse, the same hath hapned, & who have mayntayned any unlawful games their.

7. You shall enquire who are or have been since the tyme aforesaid ingrossers, forestallers, regrators, of corn within said county, or any other county, who dwell or reside within your precinct, what kind of corne or grain & of what quantitye they have been ingrossers, & forestallers, or regrators; & who are maltsters within your parish to sell there mault againe, & who use brew houses for ale or beere within your parish, & who of them sell to any unlicensed alehouse.

8. You shall certifie the names of all the petty Constables in your towne & parish, & their abilyties, & by whom they have been made, nominated, or chosen to the end that men of abilytie & good discretion maybe chosen to these places.

9. You shall enquire, & certifye, what servants have been put out of service, or have put themselves out of service, & their termes not expired, where this hath hapned, & what is become of such servants; & what unmarried persons of able bodye live out of service, whether they have meanes to live without labor; if they doe labor, who sett them on worke.

10. You shall enquire what bridges, or highwayes are in decay in your parish, & through whose default the same hath hapned.

11. You shall enquire and certifie what causes are provided in your parish for setting the poore on worke, or how or by what meanes the poore are sett on worke in your parish; & what apprentices have been placed, or bound forth in your parish, & who refused to receive & keep any apprentice soe offered to be put forth by the Justices of peace; what bastard hath been born within your parish, who the mother, who the reputed father, how they have been punished, & how the bastard provided for.

12. You shall enquire & certifie what ryotts have beene committed in your parish, within the time aforesayd, by whome, when & how the same hath beene punished.

High Constable of the hundred shall call the petty constables before him, a weeke before the Assises, & receive their answers in writing, to every one of these 12 articles.

And, the High Constable & every of the petty Constables shall affirme the truth of their Certificates upon their Oath, on or before the Assises, before one of the Justices of the peace, a week before the assises or at the monthly meetings of the Justices of that division.

You are to returne answer
in writing to euery of
these 12 articles to me
at Wendouer the 27th
of June alsoe.

Jo. Heath
Fys Haynes

IX-X

VILLAGE COMMUNITIES

OF

CAPE ANN AND SALEM

"The nature of everything is best seen in its smallest portions."—*Aristotle.*

"The doctrine of the sovereignty of the people came out of the townships and took possession of the states. Political life had its origin in the townships; and it may almost be said that each of them formed an independent nation."—*De Tocqueville.*

"By Cape Anne there is a plantation a beginning by the Dorchester [England] men, which they hold of those of New Plimoth."—*Captain John Smith.*

"In planting the colony at Cape Ann, the stock was consumed, but a foundation was laid on which now rests one of the leading States of a great nation."—*Babson, Hist. of Gloucester.*

"There are in all of us, both old and new planters, about three hundred, whereof two hundred of them are settled at Nehum-kek, now called Salem, and the rest have planted themselves at Masathulets Bay, beginning to build a town there, which we do call Cherton or Charles town."—*Higginson.*

"Some native merchant of the East, they say,
(Whether Canton, Calcutta or Bombay),
Had in his counting-room a map, whereon
Across the field in capitals was drawn
The name of SALEM, meant to represent
That Salem was the Western Continent,
While in an upper corner was put down
A dot named Boston, SALEM'S leading town."—*Rev. Charles T. Brooks.*

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

IX-X

VILLAGE COMMUNITIES
OF
CAPE ANN AND SALEM

By HERBERT B. ADAMS, Ph. D.

BALTIMORE
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I.

THE FISHER-PLANTATION AT CAPE ANN.

EARLY in the year 1624 Robert Cushman, the chief business agent of the Pilgrim fathers, wrote Governor Bradford from England: "We have tooke a patente for Cape Ann."[1] This patent, which may be seen in the library of the Essex Institute at Salem, was issued by Lord Sheffield, a member of the Council for New England, to the associates of Robert Cushman and Edward Winslow, the latter having been sent to England in 1623 in the interests of Plymouth Colony. The patent gave "free liberty, to ffish, fowle, hawke, and hunt, truck and trade" in the region of Cape Ann. Five hundred acres of land were to be reserved "for publig vses, as for the building of a Towne, Scholes, Churches, Hospitalls" and for the maintenance of such ministers, magistrates, and other local officers as might be chosen by the corporation. Thirty acres of land were

[1] Bradford, History of Plymouth Plantation, 160.

to be allotted to every person, young or old, who should come and dwell at Cape Ann within the next seven years. These allotments were to be made "in one entire place, and not stragling in dyvers or remote parcells." The whole grant was not to exceed one and a half miles in length along the water front. A yearly rent of twelve pence was to be paid Lord Sheffield for every thirty acres occupied. Authority was given to make laws and ordinances for the government of the plantation and to repel intruders by force of arms.

Such was the legal basis for the settlement and defence of an English town upon Cape Ann, where Gloucester was afterwards built. In these provisions for local government, schools, churches, hospitals, freehold land tenure, and commons for public use, we recognize the leading institutions which have entered into the town-life of New England. The idea of all these institutions originated in Old England, and ancient statutes of the realm are full of legislation regarding them. Even the Yankee disposition to truck and trade, to hunt and fish, was inherited from a nation of traders and adventurers, and by them from their Germanic forefathers. English commerce and English colonies sprang primarily from the amber-dealing tribes of the Baltic and sea-roving, colonizing bands of Northmen. The spirit of Saxon and Norman enterprise dawned upon New England from shores beyond the ocean.

But the Fisher Plantation at Cape Ann proved for the Pilgrims a failure, partly because, as Bradford says, "they made so pore a bussines of their fishing;"[2] and partly because of the exorbitant charges by English merchants for advancing colonial goods. Bradford says, "they

[2] Bradford, 197.

put 40 in ye hundred upon them, for profite and adventure, outward bound; and because of ye venture of ye paiment homeward, they would have 30 in ye hundred more, which was in all 70 per cent!"[3] The audacity of these shop-keepers who wrote their "loving friends" about "ye glorie of God and the furthrance of our countrie-men" is, however, less amazing than the fearless enterprise of the colonists who dared to assume such financial burdens, and actually succeeded, in a few years, in paying off a debt of £2,400. They did it by an extensive fur-trade wth the Indians, whom they paid in wampum, the value of which the Pilgrims had learned from Dutch traders, and the art of manufacturing which from quahaugs and periwinkles, they probably acquired from the Narragansetts.[4]

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[3] Bradford, 201. James Shirley, one of the English capitalists, writing to Governor Bradford, says: "It is true (as you write) that your ingagments are great, not only the purchass, but you are yet necessitated to take up y^e^ stock you work upon; and that not at 6 or 8 per cent. as it is here let out, but at 30, 40, and some at 50 per cent. which, were not your gaines great, and God's blessing on your honest indeavours more than ordinarie, it could not be y^t^ you should longe subsiste in y^e^ maintaining of, & upholding of your worldly affaires" (Bradford, 228–9). Such facts are very solid testimony in favor of the business energy of the Pilgrim fathers.

[4] "That which turned most to their profite," says Bradford (234) "was an entrance into the trade of Wampampeake" (wompam and peag). They learned the value of this kind of currency from the Dutch who "tould them how vendable it was at their forte Orania" (Fort Orange, or Albany). The Pilgrims bought £50 worth of this shell money from the Dutch, and introduced it in payment for beaver and other peltry, among the inland tribes of New England, and at the Plymouth trading post on the Kennebec. "At first," says Bradford, very naively, "it stuck, & it was 2 years before they, [i. e. the Plymouth people] could put of this small quantity, till y^e^ inland people knew of it; and *afterward they could scarce ever gett enough for them*, for many years together." We have been told by a local antiquary in Plymouth that the Pilgrims established a manufactory of *fiat* wampum upon Plymouth beach. Probably they got the idea from the Rhode Island Indians, "for," as Bradford says, "ye Narigansets doe geather ye shells of which yey make it from their shors" (235). Compare Hubbard's History of New England, to 100; Wheildon's Curiosities of History, 32; Arnold's Rhode Island, i, 81; Collections of Rhode Island Hist. Soc., iii, 20 *et seq.* There appear to have been two sorts of shell-money; the black or dark-purple, which was made from quahaugs or round clams, and the white, which was made from the stem of periwinkles. J. Hammond Trumbull says "*wompam* was the name of the white

English speculators were not slow to realize the possible advantages which might accrue from an occupation of the stern and rock-bound coast of New England. Even before the issue of the Cape Ann patent to men of Plymouth, certain merchants from the west of England, especially of Dorchester,[5] had sent their agents to catch fish off the promontory of Cape Ann, which in 1614 had been named "Tragabizanda" by Captain John Smith "for the sake of a lady from whom he received much favor while he was a prisoner amongst the Turks,"[6] but which soon gracefully yielded to the baptismal name of the consort of King James. In 1624, encouraged by the fame of New Plymouth and by the Rev. John White of Dorchester, the merchants of that neighborhood sent over sundry persons to carry on a regular plantation at Cape Ann, "conceiving that planting on the land might go on equally with fishing on the sea." John Tylly was appointed overseer of the fisheries and Thomas Gardener, of the plantation, at least for one year. At the end of that time,

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beads *collectively;* when strung or wrought in girdles, they constituted *waumpeg* . . . The English called all *peag*, or strung beads, by the name of the white, *wampom*," see pp. 140, 175–7, of his edition of Roger Williams, "Key into the language of America," Publications of the Narragansett Club, vol. i. This remarkable treatise by Roger Williams, which may also be found in the Collections of the Rhode Island Hist. Soc. vol. 17–163, contains a chapter on Indian Money or "Coyne," which is, perhaps, the most authentic source of original information concerning this subject. Other notices may be found in Wood's New England's Prospect ii, cap. 3; Lechford's Plaine Dealing, (Trumbull's ed. 1867) 116; and Josselyn's Account of Two Voyages to New England (ed. 1865) 110–11. The latter says the Indians work out their money "so cunningly that neither *Jew* nor devil can counterfeit."

[5] Hubbard, General History of New England, 105.

[6] *Ibid.* Compare Capt. John Smith's description of New England (ed. 1865) 17, where we find "Cape Trabigzanda" given as the old name of "Cape Anne." Elsewhere, 44, he speaks of "the faire headland Tragabigzanda." However the Turkish beauty would have spelled her name if she had had a chance, it is quite certain that Princess Anne of Denmark (1589–1619), daughter of Frederic II, spelled hers with an "e." The Patent was for "Cape Anne" and the older writers all have it so. Thornton also adopts this, the true historic form. Although Cape *Ann* is now sanctioned by popular usage, it is nevertheless a kind of slipshod vulgarism, like Rapidan for Rapid Ann, Mary Ann for Marianne or Mariana. Article on "Tragabizanda" by H. B. Adams in the Boston *Advertiser*, Aug. 17, 1883.

Roger Conant was made governor. The little colony appears to have sheltered itself under the protection of the Plymouth patent.[7] Captain John Smith, in his Generall Historie, which was published in 1624, with an abstract of Mourt's Relation, says "by Cape Anne there is a plantation a beginning by the Dorchester men, which they hold of those of New Plimoth, who also by them have set up a fishing worke."[8]

A quarrel soon broke out between the two parties. In the absence of the Plymouth fishermen, some Dorchester employés, under the command of one Mr. Hewes, came over to Cape Ann and took possession of a fishing stage built by Plymouth people the year before. Captain Standish and his men came up and peremptorily demanded the restoration of the staging. The occupants barricaded themselves upon it with hogsheads, while the Captain's party stood threatening upon shore. The dispute grew hot, says Hubbard, and high words passed between the opposing parties. The affair might have ended in blood and slaughter, if it had not been for the prudence and moderation of Governor Conant, who promised the Plymouth men that another staging should be built for them. Hubbard's pious condemnation of Standish, who undoubtedly had justice on his side, is an unconscious satire upon "the unco guid" spirit which pervades early New England history. "Captain Standish had been bred a soldier in the Low Countries, and had never entered the school of our Savior Christ, or of John the Baptist, his harbinger, or, if he was ever there, had forgot his first lessons, to offer violence to no man, and to part with the cloak rather

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[7] Thornton, Landing at Cape Anne, for text of Patent and interesting observations thereon, 31–47.

[8] Smith, Generall Historie, 247. Cf. Bradford, Hist. of Plymouth Plantation, note by Mr. Deane, 169.

than needlessly contend for the coat, though taken away without order. A little chimney is soon fired; so was the Plymouth Captain, a man of very little stature, yet of very hot and angry temper. The fire of his passion soon kindled and blown up into a flame by hot words, might easily have consumed all, had it not been seasonably quenched."[9] The conduct of Standish, instead of being reprehensible, appears to have been, on the whole, remarkably forbearing.

Hubbard also speaks in rather contemptuous terms of the Plymouth title to Cape Ann as "a useless Patent."[10] It was the only legal basis that the Cape Ann colony ever had, but it is truly remarkable that the Dorchester intruders should have asserted the right of defence, which the patent gave the Plymouth people and their associates, against the real owners of the soil and have finally expelled them together. This was the virtual conclusion of the whole matter: the Plymouth people went off to the Kennebec in 1625,[11] and the Dorchester men remained in possession of Cape Ann. There was more

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[9] Hubbard, 110–11. Cf. Bradford, 196. [10] Hubbard, 110.

[11] In the latter part of the above year the Plymouth people sent a boat-load of Indian corn up the Kennebec river, and brought home 700 lbs. of beaver skins, besides other peltry. Bradford, 204.

In the year 1627, Plymouth colony sent Mr. Allerton to England with "what beaver they could spare to pay some of their ingagements, & to defray his chargs; *for those deepe interests still kepte them low.* Also he had order to procure a patente for a fitt trading place in ye river of Kenebeck; for being emulated both by the planters at Piscataway & other places to ye eastward of them, and allso by ye fishing ships, which used to draw much profite from ye Indeans of those parts, they [the Plymouth people] *threatened to procure a grante, & shutte them out from thence:* espetially after they saw them so well furnished with commodities, as to carie the trade from them [Plymouth]. They thought it but needful to prevente such a thing, at least they might not be excluded from free trade ther, wher them selves had first begune and discovered the same, and brought it to so good effecte." We perceive by this extract from Bradford's History (221–2) that the Pilgrim Fathers were wise in their own generation. With the Kennebec trading-post in mind, Messrs. Bradford, Standish, Allerton, Winslow, Brewster, Howland, Alden, and Prince hired the trade of Plymouth colony for a term of six years, assumed all the debts of the corporation, bought off the Merchant Adventurers (retaining the aid of a few of the more honorable capitalists), and thus placed the affairs of New Plymouth upon a good business foundation. Bradford, 226–32.

method in the above seizure of the Plymouth staging than would appear from Hubbard's account. It seems from Bradford's version of the affair that certain of the merchant adventurers, who had fitted out the Plymouth colony, were now trying to dislodge them from their fishing station. Already factions had arisen among the English company, and "some of Lyfords & Oldoms friends, and their adherents, set out a shipe on fishing, on their owne accounte, and getting ye starte of ye ships [of Plymouth] that came to the plantation, they tooke away their stage, & other necessary provisions that they had made for fishing at Cap-Anne ye year before, at their great charge, and would not restore ye same, excepte they would fight for it."[12]

The first foundation of Massachusetts was for the same end as the first occupation of the islands of Venice, namely, for fishery. There is a more general truth than is usually imagined in the story told in Cotton Mather's Magnalia of the Puritan minister who once ventured to address a congregation of fishermen at Marblehead. He was exhorting them to be a religious people, otherwise, he said, you will contradict the main end of planting this wilderness. "Sir," said one of the fishermen, "you are mistaken. You think you are preaching to the people at the Bay. Our main end was to catch fish"![13] Without doubt, both Pilgrims and Puritans had religious motives in coming to America, but they had also secular motives. As English colonists under English law, they came to plant civil as well as religious society, and they distinguished more sharply between things civil and ecclesiastical than is commonly supposed. Moreover, the investment of English capital in the colonial enterprise of both Pil-

[12] Bradford, 196. Cf. 169, note.
[13] Young, Chronicles of Mass., 6.

grims and Puritans cannot be explained upon religious grounds. The prospective fur-trade and fisheries procured financial support for Plymouth and Massachusetts. When Pilgrim agents were soliciting King James for a colonial patent, he inquired what profits might arise. "Fishing," they replied laconically. "So God have my soul," said the King, "'tis an honest trade; 'twas the Apostles' own calling."[14] But fishing never proved very profitable to Plymouth in early times. The Pilgrims had such constant bad luck that it became proverbial, "a thing fatal."[15] Bradford said they "had allway lost by fishing."[16] Their chief business success lay in trading wampum and Indian corn for beaver-skins and other peltry. On the other hand, not merely the material support but the original motive for the Cape Ann Colony, which was the first foundation of Massachusetts, lay chiefly in the fisheries. "During the whole lustre of years, from 1625," says Hubbard, "there was little matter of moment acted in the Massachusetts, till the year 1629, after the obtaining the Patent; the former years being spent in fishing and trading by the agents of the Dorchester merchants, and some others of West Country."[17] Long previous to 1625 "the foresaid merchants . . . yearly sent their ships thither"[18] to Cape Ann for purposes of fishing. The idea of a permanent plantation there was suggested by the prosperity of Plymouth, but the plantation was to be mainly in aid[19] of the fisheries. Fishing continued to be and has always been the chief interest at Cape Ann. It was for the possession of this vantage ground that the Pilgrims and Dorchester employés were rivals.

The planters of Cape Ann, who professed themselves

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[14] Young's Chronicles of the Pilgrims, 383. [15] Bradford, 168. [16] *Ibid*, 262.
[17] Hubbard, 110. [18] *Ibid*, 106.
[19] White, Planter's Plea, in Young's Chron. of Mass., 5–6.

"servants of the Dorchester Company"[20] were by no means irreligious men. They leaned, however, more toward the Church of England than toward the Separatism of Plymouth. Hubbard says "the Adventurers, hearing of some religious and well-affected persons, that were lately removed out of New Plymouth, out of dislike of their principles of rigid Separation (of which number Mr. Roger Conant was one, a religious, sober, and prudent gentleman . . .) they pitched upon him for the managing and government of all their affairs at Cape Anne. . . . Together with him, likewise, they invited Mr. Lyford, lately dismissed from Plymouth, to be the minister of the place; and Mr. Oldham, also discharged on the like account from Plymouth, was invited to trade for them with the Indians. All these three at that time had their dwelling at Nantasket. Mr. Lyford accepted, and came along with Mr. Conant. Mr. Oldham liked better to stay where he was for awhile, and trade for himself, and not become liable to give an account of his gain or loss. But after a year's experience, the Adventurers, perceiving their design not like to answer their expectation, at least as to any present advantage, threw all up; yet were so civil to those that were employed under them, as to pay them all their wages, and proffered to transport them back whence they came, if so they desired."[21]

The Cape Ann experiment thus proved a failure for the Dorchester merchants, as it had done for the Pilgrim fathers. It would obviously be quite as unfair to ascribe to base and material motives the failure of the merchants in planting a sterile shore as it would to ascribe to spiritual considerations the failure of the Pilgrims in fishing a barren sea. The Dorchester merchants appear to have

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[20] Thornton, Landing at Cape Anne, 58, 59; see depositions of Woodbury and Brackenbury. [21] Hubbard, 106–7.

been very honorable and generous men. The Reverend John White, whom Hubbard calls "one of the chief founders of the Massachusetts Colony,"[22] was associated with them as a stock-owner (as he probably had been with the capitalists who fitted out the Plymouth Colony[23]) although, as Wood tells us, he "conformed to the ceremonies of the Church of England."[24] The explanation of the failure of the Cape Ann enterprise is not to be sought in the character of the men, for a better set of colonists never trod the shores of the New World than the Old Planters[25] who left the unproductive Cape and founded the town of Salem. The plain fact is that the spot originally chosen was a poor one for a new plantation. Roger Conant never liked the place, and soon began to make inquiries for one more commodious, which he found a little southwestward from Cape Ann, upon the further side of a creek called Naumkeag. Cape Ann was consequently abandoned, but it was the stepping-stone to Salem.

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[22] *Ibid*, 107.

[23] Bradford's Letter Book, Collections of Mass. Hist. Soc., 1st series, iii, 48, for list of Plymouth adventurers. Cf. Bradford's History, note by the editor, 213.

[24] Young's Chronicles of Mass., 26, note.

[25] The best account of the antecedents and belongings of the Old Planters of Salem may be found in George D. Phippen's article upon this subject in the Hist. Coll. of the Essex Institute, i, 97 *et seq.* Thornton's Landing at Cape Anne is also a pioneer effort in this interesting field of Massachusetts beginnings. The student of Hubbard would naturally infer that only four or five men removed with Roger Conant from Cape Ann to Naumkeag, but Mr. Phippen shows that there were more than a dozen emigrants. He gives the following list; Roger Conant (governor), John Lyford (minister), John Woodbury (who became the first constable of Salem), Humphrey Woodbury, John Balch (ancestor of the Beverly Balches), Peter Palfrey (progenitor of the historian of New England), Capt. Traske (ancestor of W. B. Traske of Dorchester, who lately transcribed the Suffolk Deeds), William Jeffrey, John Tylly, Thomas Gardner, William Allen, Thomas Gray, Walter Knight, Richard Norman and his son of the same name, which clings yet to the reef of Norman's Woe, where one of the family was lost. Compare Thornton's list (Landing at Cape Anne, 63). Mr. Phippen thinks that, including men, women and children, there must have been, at least, thirty people in the little migration which colonized Salem. The colony at Cape Ann, he conjectures, numbered not far from fifty persons. White, in his Planter's Plea, says, "In building houses the first stones of the foundation are buried underground and are not seen." We shall find the Old Planters very lively stones in the upbuilding of Salem.

II.

ORIGIN

OF

SALEM PLANTATION.

ONE of the proximate causes for the removal of Roger Conant and his associates to the green, inviting meadows of Naumkeag was undoubtedly the desire of obtaining better accommodations for the pasturing of cattle. Some of the colonists had now gone home to England or had resumed their seafaring life; "but a few of the most honest and industrious," as the Reverend John White tells us in his Planters' Plea, "resolved to stay behind and take charge of the cattle sent over the year before."[1] Not liking the pastoral facilities of Cape Anne, which White says had been chosen rather on account of its advantages for fishing, the little company of a dozen or more men, who

[1] White, Planters' Plea, in Young's Chronicles of Massachusetts, 12.

This Plea was obviously written in the interests of the colonization as a business. The work is full of financial data, matters of profit and loss in the fisheries and fur-trade, and throws more light upon "the causes moving such as have lately vndertaken a plantation in New England" than any existing documentary evidence, apart from the original records of the Massachusetts Company.

now remained, transported themselves with their families and cattle, to Naumkeag, where they found fresh fields and pastures new. A common for pasture was Salem, therefore, in its historic origin, and a common for historical browsing does Salem yet remain.

Another occasion for the original occupation of Naumkeag was the excellent opportunity here presented for raising Indian corn. We are told by an almost contemporary historian, who probably obtained his information from Roger Conant himself, that Naumkeag "afforded a considerable quantity of planting land, ... Here," continues Hubbard in his narrative, "they took up their station upon a pleasant and fruitful neck of land, environed with an arm of the sea on each side."[2] It appears that the place was to a considerable extent, an open tract of country. It was certainly the inviting meadow and the "quantity of planting land" which attracted the attention of the first explorers. Here they found, already cleared for their use, what the ancient Germans would have termed a Mark. Here lay the *camporum spatia*,[3] the wide-extending open spaces, in which, according to Tacitus, the Germans found division of land an easy matter. There can be little doubt that the first settlers of Naumkeag found here as good an opening as did many German villages in the Black Forest or the Odenwald. The Reverend Francis Higginson, in his New England's Plantation, says, "Though all the country be, as it were, a thick wood for the general, yet in divers places, there is much ground cleared by the Indians, and especially about the Plantation [Naumkeag]; and I am told that about three miles from us a man may stand on a little hilly place and see divers thou-

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[2] Young's Chron. of Mass., 21.

[3] Tacitus, Germania, Cap. 26.

sands of acres of ground as good as need to be, and not a tree in the same."[4]

It is one of the most interesting facts connected with the plantation of many New England towns that they were built upon open spaces formerly cultivated by the Indians. Plymouth was planted, not under "the rocking pines of the forest" but in an old Indian corn-field, probably near the site of some ancient Indian village, which had been devastated by the pestilence that swept off so many Indian tribes before the English came over. The Pilgrim record says, "we came to a conclusion by most voices, to set on the main land, . . upon a high ground, where there is a great deal of land cleared, and hath been planted with corn three or four years ago."[5] Although there is no such original record of the planters of Naumkeag, yet doubtless it was by some such informal vote, by the agreement of the greatest number, that Roger Conant and his little company determined to occupy this "pleasant and fruitful neck of land." So pleasant, in fact, and at the same time so ancient did the Puritan clergy afterward consider this old Indian locality, that some of the more learned

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[4] Francis Higginson, New England's Plantation (Young, 244).

Thomas Graves, also, a professional engineer and surveyor, who came over with Higginson, to lay out towns and investigate the resources of the country, its mines, minerals, salt springs, etc., confirms the above testimony. Graves had been a great "traveller in divers foreign parts," but says, "Thus much I can affirm in general, that I never came in a more goodly country in all my life, all things considered. If it hath not at any time been manured and husbanded, yet it is very beautiful in open lands mixed with goodly woods, and again open plains, in some places five hundred acres, some places more, some less, not much troublesome for to clear for the plough to go in; no place barren but on the tops of the hills. The grass and weeds grow up to a man's face in the lowlands, and by fresh rivers abundance of grass and large meadows, without any tree or shrub to hinder the scythe." Graves says that, for cattle, corn, and grapes, he never saw any such land, except in Germany and Hungary, to which latter country he is always inclined to liken New England. See Young, 264. For an interesting note on Thomas Graves, see Young, 152.

[5] Mourt's Relation, or the Journal of Bradford and Winslow, in Young's Chronicles of the Pilgrims, 124, 167, 206, 229; Young's Chron. of Mass. 244.

divines were disposed to identify Naumkeag with the Hebrew Nahumkeike, signifying by interpretation, the "bosom of consolation," or, as Cotton Mather said, a "haven of comfort."[6] And Francis Higginson, who, with "a company of honest planters," joined the original settlers, called the place Salem from the Peace,[7] which they found here; although, according to another account, there arose some little jealousy between the old and new comers, which was finally allayed, the new Hebrew name then replacing the old by common consent to commemorate the establishment of an era of good feeling among neighbors.[8] But without laying stress upon pious etymologies, or upon the theory that Salem was once the abode of the lost tribes of Israel, we may safely say that the discouraged fishermen from Cape Ann found here a tolerably attractive opening in what has been called "an immeasurable expanse of lofty forests shrouded in the sable gloom of ages."[9] We may also rest assured that the Puritans, wandering away from their mother country and mother church, sought and found here upon this beautiful neck of Indian land, within the arms of the sea, that peace which the exiled Dante[10] found only in his grave.

The forest clearing originally occupied by the planters

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[6] Mather, Magnalia, i, 328.

[7] Higginson's Journal in Young's Chron. of Mass., 21.

[8] Young, Chron. of Mass., 12, 21, 31, 145. The name of Concord, N. H., was thus chosen to commemorate the establishment of peace between two rival jurisdictions.

[9] Drake, History and Antiquities of Boston, 56 (a passage concerning the condition of the country about Conant's plantation).

[10] Dante's Divine Comedy, Inferno. Longfellow's Illustrations, Letter of Frate Ilario: "Hitherto he came, passing through the diocese of Luni, moved either by the religion of the place, or by some other feeling. And seeing him, as yet unknown to me and to all my brethren, I questioned him of his wishings and his seekings there. He moved not; but stood silently contemplating the columns and arches of the cloister. And again I asked him what he wished, and whom he sought. Then, slowly turning his head, and looking at the friars and at me, he answered: 'Peace.'"

of Naumkeag was held by them in virtual commonage. They were acting as representatives of the Dorchester Company, which had sent over the very cattle that the colonists were now trying to preserve in the interest of their patrons. For the encouragement of these faithful men and as an earnest of future aid toward the establishment of a permanent plantation, the Dorchester merchants who had now combined with some London capitalists, sent over in 1626 twenty-four additional kine.[11] These also must have been pastured as a common herd together with the creatures sent over in 1625. A common of pasturage, therefore, was the open country about Salem from the very beginning. There is some reason for believing that planting ground was taken up by the white settlers in common with the Indians. In the deposition made by William Dixy, of Beverly, in 1680, to confirm Salem's Indian land titles, occurs the following interesting testimony: "I came to New England and ariued in June 1620 at cape an, where wee found the signes of buildings and plantation work, and saw noe English people, soe we sailed to the place now caled Salem, where we found Mr. John Endecott, Gouernor and sundry inhabitants besides: some of whom s^{d} they had beene seruants to the Dorchester company: & had built at cape an sundry yeares before wee came ouer,—when we came to dwell heare the Indians bid vs welcome and shewed themselues very glad that we came to dwell among them, and I vnderstood they had kindly entertained the English y^{t} came hether before wee came, *and the English and the Indians had a feild in common fenced in together.*"[12] There is sufficient evidence of the friendly relations existing between

[11] White, Planter's Plea, in Young's Chron. of Mass., 12.

[12] Thornton, Landing at Cape Anne, 81. Compare the depositions of other old settlers, given in Thornton's appendix, in regard to the title from the Indians, also the Indian deed of lands.

the early settlers and the natives, and of the fact that both planted side by side. Nowhere else in Massachusetts, save in the town of Stockbridge, have we as yet found more delightful tokens of a recognized community of village interests between the white and red men than in the peaceful town of Salem, the Indian Naumkeag.

In Stockbridge, Indians not only owned lands[13] in common with the whites, but shared in the town offices, voted in town meeting, and communed with their pale faced brethren in the church. The Naumkeag Indians were also kindly treated by the white settlers and frequently paid them friendly visits, as did the Stockbridge Indians[14] to their friends after withdrawing from their old village-home.

The Reverend John White had promised Roger Conant by letter that, if he had a few other faithful men would hold fast and not desert the business of the plantation, a regular patent should be procured and "whatever they should write for, either men, or provision, or goods wherewith to trade with the Indians"[15] should be sent over. Hubbard says Mr. White was prompted to make this offer because some intimation had come from Roger Conant that the region of Salem "might prove a receptacle for such as upon the account of religion would be willing to begin a foreign Plantation in this part of the world."[16] This

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[13] The Anglo-Indian land community at Montauk, Easthampton, Long Island, is perhaps the most remarkable case that has survived until a recent date. The subject has been investigated by Mr. J. F. Jameson, a Fellow of the Johns Hopkins University. Mag. of Amer. Hist., April, 1883.

[14] The history of the Stockbrige Indians is under investigation by the writer in connection with the Evolution of Village Improvement in the mission town of Stockbridge.

[15] Hubbard, 108. A fur trade with the natives was one of the economic foundations of Massachusetts as well as of Plymouth, see Hubbard, 110, and Higginson, in Young's Chron. of Mass. Roger Conant was an especially enterprising fur-trader. In 1631, he and Peter Palfrey, and others, formed a Company "for traffic in furs, with a truck house at the eastward," or as we should now say, "down in Maine," see Hist. Coll. Essex Inst., i, 102.

[16] *Ibid*, 107.

may have been Roger Conant's thought, but it is more likely that it was good Mr. Hubbard's pious reflection, for, at the time of the alleged communication, Roger Conant was a Church of England man; Lyford, the minister of Naumkeag, was warmly devoted to the interests of the established church, as his Plymouth career would show; the Reverend John White himself was at no time in his life more than a very moderate Puritan, for he is said to have conformed to the ceremonies of the established Church and he held church livings in England until the end of his days. Mr. White was a very philanthropic, learned, and orthodox divine. He was one of the Assembly which framed the Westminster catechism and was highly respected by the Puritan party, but he was no extremist or Puritan propagandist.[17] In his Planter's Plea, he tells the plain, unvarnished truth about the colonial establishment of Massachusetts. He says some of the adventurers desired to continue their attempt at a plantation; that they sent over more cattle to encourage the old planters and to attract others; they conferred with some gentlemen of London and persuaded them to take stock in the enterprise. "The business came to agitation afresh." Some approved it and others dissuaded. The matter was common talk in London and was soon noised abroad. Some men became so much interested in the project that they promised "the help of their purses if fit men might be procured to go over." Upon inquiry, John Endicott and other good men were found, who were willing to go to New England and carry on the work of "erecting a new Colony upon the old foundation." Money was subscribed; a patent was secured; and Endicott, with a few men, was sent over to Naumkeag, where he arrived in September, 1628, "and uniting his own men with those

[17] Young's Chron. of Mass., 26.

which were formerly planted in the country into one body, they made up in all not much above fifty or sixty persons." From another source of information, it appears that, later in the year, a small band of servants was sent over by the Massachusetts Company, which was now forming.

The Planter's Plea gives us the *raison d'être* of this enterprising and excellent Company. The safe arrival of Endicott's party and the favorable reports he sent back to England encouraged other capitalists to join the enterprise, and, "all engaging themselves more deeply," the next year about three hundred more colonists, "*most servants*," were sent over with some horses and sixty or seventy "rother-beasts" [18] (*i. e.*, cows and oxen, from Saxon *hrudher*, Old German *hrind*). The widening fame of Endicott's good government and of the success of the colony "began to awaken the spirits of some persons of competent estates, not formerly engaged." Being "without any useful employment at home" and thinking to be serviceable in planting a colony in New England, such men, of whom doubtless John Winthrop, Matthew Cradock, Sir Richard Saltonstall, Isaac Johnson, and Thomas Dudley are good types, joined the Massachusetts Company, probably with some remote intention of going out to America,—just as Englishmen now go out to India or Australia. We may add in passing that Matthew Cradock, the first governor of the Company and the predecessor of Winthrop, never came to America at all, but he sent out many servants who started for him a plantation of 2500 acres on the Mystick River (Medford) and impaled for him a deer-park: he had his own business-agent in Massachusetts and invested capital in ship-building, in the fisheries and in

[18] In the Statutes of the Realm, 3 and 4 Edw. vi., we have found "An Act for the buyinge of Rother Beasts and Cattell."

the fur-trade.[19] Mr. White says that other people, "seeing such men of good estates" engaged in the enterprise, some out of attachment to these parties and "others upon other respects" (presumably religious grounds), united with them. Thus the Company was formed and a competent number of persons were secured to embark for New England.

Ministers were provided by the Company as a matter of course. Even the Dorchester merchants hired a minister. Messrs. Bright (who was devoted to the established church), Higginson, and Skelton (who were Puritans still in the Church) went out to New England, not as voluntary missionaries, but upon very good contracts for those times, before men were passing rich on £40 a year. Higginson was to have £30 for his outfit, £10 for books, free transport to New England, a house, glebe-lands and fire-wood, the milk of two cows, and £30 a year for three years, at the end of which time "if he shall not like to continue," he was to have free passage home. Provision was made for his wife and children, in case he should die. It is very curious to note in the records of the Massachusetts Company, the items there entered for the outfit of the colony: Ministers, men skilful in making pitch and salt, vine planters,[20] patent under seal, wheat, rye, barley, oats, stones of all sorts of fruit, potatoes, hop-roots, hemp, flax, tame turkeys, linen and woollen cloth, pewter bottles, pint and quart measures, brass ladles, spoons, kettles,

[19] Young's Chron. of Mass., 137.

[20] Endicott wanted "Frenchmen—experienced in planting vines." The Company, in a letter to the Governor, said they had made diligent inquiry, but could not get hold of any of that nation. "Nevertheless," they say, "God hath not left us altogether unprovided of a man [Mr. Graves] able to undertake that work," *i. e.*, labor in the vineyards of the Mass. Co. Governor Endicott planted a vineyard of his own in Salem. Governor Winthrop agreed to plant a vineyard upon so-called Conant's Island, afterwards the Governor's Garden or Governor's Island, the yearly rent of which was to be a hogshead of the best wyne that shall grow there," payment to begin after the death of the Governor! (Mass. Col. Rec., i, 94, 139; cf. Young's Chron. of Mass., 152).

arms and apparel for 100 men, 45 tuns of beer, and *six tuns of water*, 20 gallons of Spanish wine, 20 gallons of aqua vitæ and 20 gallons of oil[21]—this for one ship with a hundred passengers!

When Higginson and three ship loads of emigrants reached Naumkeag in June, 1629, there were found living under Endicott's government about one hundred planters. "We brought with us," says Higginson, who does not count *servants*,[22] "about two hundred passengers and planters more, which, by common consent of the old planters, were all combined together into one body politic, under the same Governor. There are in all of us, both old and new planters, about three hundred, whereof two hundred of them are settled at Nehumkek now called Salem, and the rest have planted themselves at Masathulets Bay, beginning to build a town there, which we do call Cherton or Charles town. We that are settled at Salem make what haste we can to build houses, so that within a short time we shall have a fair town."[23] This account was written before the end of September, 1629, so that it appears the town-life of the Massachusetts colony was already beginning to bud and blossom in the wilderness.

The appearance of Salem at the time of Higginson's arrival is pleasantly described by that entertaining divine,

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[21] Mass. Col. Records, i, 23–7.

[22] Barry, History of Mass., i, 165. Barry thinks there were one hundred and eighty servants sent over to Salem.

[23] "New England's Plantation, Or a Short and Trve Description of the Commodities and Discommodities of that Countrey, written by Mr. Higgeson, a reuerend Diuine there resident. Whereunto is added a Letter, sent by Mr. Graues, an Enginere, out of New-England. The third Edition, enlarged!" (See Young's Chron. of Mass., 258–9). The publisher, in a prefatory note, says the work was "not intended for the press." "It was written by a reverend divine now there living, who only sent it to some friends here which were desirous of his Relations." Possibly the letter of Mr. Graves, the professional engineer, who was employed by the Company, was also not intended for publication, but his brief report and Higginson's long and highly interesting account of the plantation quickly found their way into print. Higginson's glowing sketch went through three editions in a single year, showing a marked public interest in the fortunes of the Massachusetts colony.

who though perhaps a trifle inclined to view the colonial fields of Massachusetts through benignant glasses, can be safely followed in local matters which he must have regarded with tolerably clear vision. "When he came first to Nehumkek," he says very simply, "we found about half a score houses, and a fair house newly built for the Governor." The Governor had a garden with a lot of green pease growing in it, as good as were ever seen in England. There were also in the plantation plenty of turnips, parsnips, carrots, pumpkins, and cucumbers. The Governor had planted a vineyard with great hope of increase. An abundance of corn was growing. The planters hoped that year to harvest more than a hundred fold. Higginson says it is almost incredible what great crops of Indian corn the planters have raised. One man told him that from the setting of thirteen gallons of corn he had had an increase of fifty-two hogsheads, every hogshead holding seven bushels, London measure, and every bushel had been sold to the Indians for an amount of beaver skins equivalent to eighteen shillings. Thus, from thirteen gallons of corn, worth six shillings, eight pence, reckons the good minister, a single farmer made in one year about £327, or over $1,500. We must make allowance for good-natured ministerial arithmetic and for the use of a very large sized fish as fertilizer in every hill of the old planters' corn, but we may, with probable truth, picture to ourselves a tolerably flourishing plantation made up of individual gardens and home-lots. We know that the old planters took up lands for themselves from the fact that Governor Endicott was instructed by the Massachusetts Company in the spring of 1629, to allow the first comers to keep "those lands w^{ch} formerly they have manured;"[24] and the above account of the success of one planter would indicate that at least the

[24] Mass. Coll. Rec., i, 388.

arable lands were occupied in severalty. Higginson gives us to understand that even servants were to enjoy each the use of fifty acres. Some intimation, thereupon, of the plan proposed by the Massachusetts Company, May 19, 1629 (whereby each adventurer in the common stock was to have fifty acres for every member of his family and for every servant transported)[25] appears already to have reached the plantation. There was land enough for all. "Great pity it is," says Higginson, "to see so much good ground for corn and for grass as any is under the heavens, to lie altogether unoccupied, when so many honest men and their families in Old England, through the populousness thereof, do make very hard shift to live one by the other." The Indians do not object to the coming and planting of the English here, because there is an abundance of ground which the Indians can neither use nor possess. This land, he asserts, is fitted "for pasture or for plough or meadow ground." As for wood, a poor servant may have more timber and fuel than could many a nobleman in England. Nay, all Europe could not afford to make so great fires as New England. And as for fresh water, he continues, the country is full of dainty springs, and some great rivers, and some lesser brooks. Near Salem we have as fine clear water as we could desire, and we can dig wells and find water wherever we please.[26]

Higginson's account of the attractions of Salem is to some extent confirmed by William Wood, who came over to this country with Higginson, for a tour of observation, and wrote a very good description of the Massachusetts towns that were planted before his return to England in August, 1633. Wood's account of Salem is not quite so flattering to local pride, but it enables the reader to obtain a very matter-of-fact picture, entirely free from any

[25] *Ibid*, 43.

[26] Higginson, New England's Plantation (in Young's Chron. of Mass., 242–64).

suspicion of *couleur de rose.* "Four miles north-east from Saugus," says Wood, "lieth Salem, which stands on the middle of a neck of land very pleasantly, having a South river on the one side, and a North river on the other side. Upon this neck, where the most of the houses stand, is very bad and sandy ground. Yet, for seven years together, it hath brought forth exceeding good corn, by being *fished* but every third year. In some places is very good ground, and very good timber, and divers springs hard by the sea-side. Here, likewise, is store of fish, as basses, eels, lobsters, clams, &c. Although their land be none of the best, yet beyond those rivers is a very good soil, where they have taken farms, and get their hay, and plant their corn. There they cross these rivers with small canoes, which are made of whole pine trees, being about two foot and a half over, and twenty foot long. In these likewise they go a fowling, sometimes two leagues to sea. There be more canoes[27] in this town, than in all the whole Patent; every household having a water-horse or two. The town wants an alewife river, which is a great inconvenience. It hath two good harbours, the one being called Winter, and the other Summer harbour, which lieth within Derby's fort; which place, if it were well fortified, might keep ships from landing of forces in any of these two places." [28]

In this sketch of primitive Salem we see foreshadowed a rising city by the sea. These rude gondolas plying across the rivers and up and down the harbor represent for a simple agrarian folk that same in-dwelling maritime spirit which gradually transformed the rude fisherman of the Adriatic lagoons into merchant princes, trading with the Eastern Empire as the merchants of Salem were destined to trade with the farthest Orient. The beginning

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[27] In 1636, Roger Conant was on the committee for inspecting the canoes of Salem.

[28] William Wood, New England's Prospect, in Young's Chron. of Mass., 409–10.

of Salem's foreign trade was precisely like that of Venice, namely, furnishing salt fish to Catholic countries, a trade which developed into the import of silks and spices of the Orient. In a recent poem by a son of Salem, who looks back upon the first settlement of this place through the field-glass of History, the bard exclaims

> Yonder we see from the North River shore
> The farmers of the region paddling o'er![29]

And the poet-sculptor Story, living under dreamy Italian skies, has sung of Salem his native town.

> Ah me, how many an autumn day
> We watched with palpitating breast
> Some stately ship, from India or Cathay,
> Laden with spicy odours from the East,
> Come sailing up the bay![30]

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[29] From a poem by the Rev. Charles T. Brooks, at the Celebration of the Two Hundred and Fiftieth Anniversary of the Landing of Endicott, Historical Collections of the Essex Institute, xv, 212.

[30] From an ode by William W. Story, on the above occasion, *ibid*, 236.

The Visitor's Guide to Salem (H. P. Ives, 1880) says, page 6, "Salem has had a most remarkable commercial record. In 1825 there were one hundred and ninety-eight vessels owned in Salem. In 1833 there were one hundred and eleven engaged in foreign trade. Salem 'led the way from New England round the Cape of Good Hope to the Isle of France, and India and China. Her vessels were the first from this country to display the American flag and open trade with St. Petersburg, and Zanzibar, and Sumatra; with Calcutta and Bombay; with Batavia and Arabia; with Madagascar and Australia.'"

The Rev. Charles T. Brooks has put into verse a story familiar to Salem people of the grandeur of this city as viewed in the imagination of the Orient.

> Some native merchant of the East, they say,
> (Whether Canton, Calcutta or Bombay),
> Had in his counting-room a map, whereon
> Across the field in capitals was drawn
> The name of Salem, meant to represent
> That Salem was the Western Continent,
> While in an upper corner was put down
> A dot named Boston, SALEM'S leading town. *Ibid*, 213.

On the subject of Salem's oriental trade, see article by Robert S. Rantoul, on "Old Channels of Trade," in the Bulletin of the Essex Inst., ii, 145–154; and "The port of Salem," by the same writer, Hist. Coll. Essex Inst., x, pp. 52–72, and G. F. Cheever's "Remarks on the Commerce of Salem, 1626–1740," in the Hist. Coll. of Essex Inst., i, 67, 77, 117; also, see "Life of Elias Hasket Derby," Freeman Hunt's "Lives of American merchants, New York, 1858," vol. ii, pp. 17–100, and "Historical Sketch of Salem," by Osgood and Batchelder, Institute Press, 1879, chap. viii, p. 126–227, and a letter of Robert S. Rantoul to the National Board of Health, Salem, March, 1882, on the "Early Quarantine Arrangements of Salem," Essex Inst. Bulletin, vol. xiv, pp. 1–56.

III.

ALLOTMENTS OF LAND IN SALEM TO MEN, WOMEN, AND MAIDS.

THE situation of the original house-lots of the Old Planters of Salem has been the subject of careful investigation and some friendly controversy among local antiquaries and historians. It is interesting to trace the development of correct views from earlier but erroneous opinions. The Reverend William Bentley, in his Description and History of Salem, published by the Massachusetts Historical Society in 1800, says, "when Francis Higginson arrived in 1629, there were only six houses, besides that of Governor Endicott, and *these were not on the land now called Salem.*"[1] What authority Mr. Bentley had for this latter statement does not appear in his monograph. Probably he had in mind some local tradition connected with the locality of the Old Planters' Common Meadow, which of course lay without the village. Following upon Mr. Bentley's track, in 1835, came Robert Rantoul, sr., with his Memoranda of Beverly, published by the Massachusetts Historical Society, wherein he states very positively, "Roger Conant, John Woodberry and Peter Palfry first settled in 1626, on the neck of land between Collin's Cove on the south, and the North river on the north, in Salem. Bridge Street, leading from the compact part of Salem to Essex (Beverly) Bridge, runs over this neck of land. Their first houses were near the margin of the river, and their lots running from the river across the neck to Collin's Cove."[2] This firmly planted opinion seems to have

[1] Collections of the Mass. Hist. Soc., 1st Series, vi, 231.

[2] *Ibid*, 3d Series, vii, 254. Also Hist. Coll. Essex Inst., xviii, 307–8.

held its ground in Salem until a very recent date. Even Mr. Phippen, in his admirable sketch of the Old Planters, accepted the traditional notion, with certain modifications, suggestive of the real truth. He says, "The Old Planters appear to have occupied the larger part of the peninsula lying between the North River and Collin's Cove; and *they may not have been strangers to that larger peninsula beyond, which afterwards became the centre of the town.*"[3]

In 1859 came the full development and substantiation of this latter view by Mr. William P. Upham, who made a most thorough examination of old deeds and land titles and established the position, now cordially accepted by Mr. Phippen,[4] that "the old Planters occupied that portion of our territory which has ever remained the nucleus and central body of the town."[5] Mr. Upham in a series of articles on the First Houses in Salem, published in the Bulletin of the Essex Institute, gives most conclusive proof[6] of this assertion. His results may be summed up in the following statement: "The manner in which the house lots in the central part of the town were originally laid out, seems to indicate that the earliest settlement was made in the vicinity of Elm street and Washington street upon the South river. Between these streets the lots were small, irregular, and not in conformity with the plan upon which the rest of the town was laid out. East of there, all along the South river to the Neck, house-lots were laid out running back from the river; and along the North river, west of North street were larger house-lots, also running back from that river. Essex street was probably a way that came gradually into use along the ends of these lots; and as they were all of the same depth from the river

[3] Hist. Coll. of the Essex Institute, i, 103.

[4] Bulletin of the Essex Institute, i, 51. [5] *Ibid*, i, 51.

[6] See especially ii, 33–36, 49–52. These articles extend through two volumes of the Bulletin, i, 37, 53, 73, 129 and 145, *et seq.* ii, 35, 49.

this street acquired, and has retained the same curves that the rivers originally had."[7] Mr. Upham is inclined to believe that the Old Planters did not all live closely together, but were somewhat scattered, each man having his separate house-lot and lands. Mr. Upham has completely overthrown the ancient tradition that the Old Planters "settled upon the comparatively small peninsula lying between Naumkeag, now North River, and Shallop or Collin's Cove," where Mr. Phippen supposed "Conant and some of his followers built their first small and unsubstantial cottages."[8] This latter view probably arose from the popular misconception that the Old Planters' houses must necessarily have been upon their Common Meadow. Mr. Upham thinks the land in that vicinity was not occupied for building purposes until nearly ten years after the original settlement of Naumkeag, that is, until after Beverly and Ipswich were planted.

The historical reconstruction of the ground plan of New England Village Communities is one of the most important subjects which can occupy the local antiquary. The situation of the original house-lots, the first laying out of streets and lanes, the names of village localities, the transfers of real estate, the perpetuation of ancient landmarks which our fathers have set, the first site of churches and burying grounds, the lines of old forts and of village stockades (from which historical idea of a place *hedged-in*, the Town itself—from *Tun*, *Zun*, Zaun or hedge—actually

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[7] *Ibid*, ii, 52.

[8] Hist. Coll. of the Essex Inst., i, 197. It is an interesting fact that the framework of the "fair house newly built for the Governor" is still standing in Salem, north corner of Washington and Church streets, but it is still more interesting that this structure, though not the first in Salem, was the original "great Frame House" erected in 1624 at Cape Ann by the Old Planters, but pulled down, brought to Salem, and reconstructed "for Mr. Endecott's use," see C. M. Endicott in Hist. Coll. Essex Inst., ii, 39; cf. i, 102, 156. This is probably the oldest material structure in New England, and it is for Salem what "the Common House," if yet standing, would be for Plymouth.

sprang),—these things are all important in the study of town origins. They are the material foundations upon which the town rests as an abiding institution. Generations of men pass away, but old landmarks remain. It is worth while to clear away the accumulated rubbish of years and to discover the sub-structure of every New England village, just as modern antiquaries have unearthed the oldest walls of Rome. From an original diagram, preserved in the colonial records of Plymouth, we are able to determine with positive certainty the direction of the first street and the exact situation of the first house-lots in the oldest village of New England. Mr. William T. Davis, a noted antiquary of Plymouth, has during the past few years been examining old deeds and local records with a view to writing the history of the real estate of that ancient town. He published some of his materials in the Plymouth *Free Press*, under the title of "Ancient Landmarks." [9] The city of Boston has published a similar series of monumental studies called the Gleaner Articles, first contributed more than twenty-five years ago to the Boston *Daily Transcript* by a learned conveyancer, Nathaniel Bowditch. [10] The studies of Mr. Phippen and Mr. Upham stand in the same fundamental relation to the beginnings of Salem and of the Massachusetts Colony as the studies of Mr. Davis and Mr. Bowditch to the beginnings of Plymouth and Boston. Such good works ought to grow from more to more. The territorial history of every town should be not merely written, but pictorially described by means of maps, showing early topography and ancient landmarks.

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[9] In a circular issued Feb. 15, 1882, Mr. Davis proposes to publish his researches in an octavo volume of 600 pages, entitled "Ancient Landmarks of Plymouth."

[10] Fifth Report of the Record Commissioners. Materials for the continuation of such studies are now easily accessible in the volume of Suffolk deeds, transcribed by that eminent antiquary, William B. Trask, a descendant of Capt. Wm. Trask, one of the old Planters of Salem.

The house-lots of ancient Salem, as in all village communities, were quite small, considering the amount of available land in the plantation. In 1637, nearly two years after Mr. Conant had received his grant of two hundred acres in Beverly, it was ordered by the town of Salem, that Mr. Conant's house, with half[11] an acre of ground and the corn standing upon the same, should be bought at the town's expense for the use of old Mr. Plase and wife, who should occupy the premises for the rest of their lives. The place was then to revert to the town, which agreed to settle with the executors or assigns of Mr. Plase for whatever improvements he had made upon the ground. Now if Mr. Conant, the leading man of old Naumkeag, had only half an acre for his home-lot, it is fair to presume that his associates possessed at most only half acre homesteads. The idea of a home-lot was a plot of ground sufficient for a dwelling-house and out-buildings, for a door yard and garden, with perhaps a small inclosure for feeding cattle or raising corn. When Higginson arrived in Salem, he noticed at once the Governor's garden, with its growing pease, and other gardens full of vegetables. This type of a house- or home-lot is familiar enough to New England people. We see it everywhere in our country towns and villages, where the houses are built together with any considerable degree of compactness. Tacitus might say of the early settlers of New England as he said of the ancient Germans, *Vicos locant non in nostrum morem conexis et cohaerentibus ædificiis: suam quisque domum spatio circumdat.*[12] At no time in the early history of Salem were town-lots large. They were usually about an acre in extent. In the so-called Book of Grants, which are the oldest records of this town, we read in one place of two acre house-lots, but a page or two later, it appears that

[11] Town Records of Salem, i, 55. Cf. 121. [12] Tacitus Germania, cap. 16.

"the two acre lots were limited to one acre.[13] Even smaller house-lots than a half acre were sometimes granted; for example, "Augustin Kellham is admitted for inhabitant & is to haue a quarter of an acre before Esties house."[14] Half acre lots were very frequently granted to fishermen at Winter Harbor and to the poor people upon the Town Neck. Many of these small grants were to be held only during the town's pleasure, and were therefore, strictly of the nature of "cottage rights" upon the waste land of an English manor. So-called cottage rights, as we shall further see, became an important criterion in Salem[15] at the beginning of the eighteenth century, for the division of common land. The inhabitants of Marblehead, which formerly belonged to Salem territory, were granted house-lots and nothing more, it being ordered by the town of Salem that "none inhabiting at Marble Head shall haue any other accommodation of land, other than such as is vsually giuen by the Towne to fishermen viz. a howse lott & a garden lott or ground for the placing of their flakes; according to the company belonging to their families, to the greatest family not aboue 2 acres: & the common of the woods neere adioyning for their goates & their cattle."[16] Cottage rights appear to have been granted to the men engaged in the Glass Works, with common in the Glass House Fields.[17]

But other lands than house-lots were speedily occupied in the settlement of the town of Salem. Indeed, it is very certain that the Old Planters owned more land than their homesteads. Governor Endicott, as we have seen, was instructed by the Massachusetts Company to confirm Mr. Conant and his men in the possession of lands which they had already improved and to grant them such other lands

[13] Town records of Salem, i, 9, 11. [14] *Ibid*, 53.

[15] *Ibid*, 17, 33, 53, 62, 63. Cf. Report of the City Solicitor on the Sale of the Neck Lands, 11.

[16] Town Records of Salem, i, 27–28. The town of Gloucester is built upon the "fisherman's field." See Thornton's Landing at Cape Anne, 83–4.

[17] *Ibid*, 94, 225.

as might seem fitting.[18] And yet we are inclined to think that the Old Planters' farms were very limited in extent until after the grants in Beverly, of which we shall elsewhere speak. In spite of the large stories told to good Mr. Higginson about the enormous crops raised by the Old Planters, we believe that their corn fields were not very different from the type represented by Roger Conant's half acre in 1637. Probably the enterprising Mr. Conant had as much land as any of his associates, yet all that he possessed in the vicinity of the town, in 1637, was something less than forty-four acres, of which presumably a very small proportion was actually under cultivation. At Plymouth an acre of planting ground sufficed for an individual from 1623, when the first distribution of arable land occurred, down to 1627, when the partnership with the London merchants was dissolved and twenty more acres were allotted to each person. The normal amount of planting ground allowed to an individual during the early years of Salem history was ten acres. Almost the first entry in the Book of Grants is in regard to the division of ten acre lots. It was ordered that the least family should have ten acres, but greater families should have more, according to the number of persons in the household.[19] A "10 acre lott and a howse lott"[20] were regarded as a proper allowance for the head of a family. Mr. Plase, the blacksmith, who was established in Mr. Conant's old house, with a shop and forge at town expense, petitioned for a "tenne acre lott"[21] and obtained it. Lieutenant Davenport likewise received a ten acre lot.[22] Ten acres were enough for good farming in those days as now. To be sure, many attempts were made to inclose more, but the town authorities resolutely punished all such incroachments. John Pickering, Edmund Giles, Abraham

[18] Mass. Coll. Rec., i, 388. [19] Salem Town Records of Salem, 8.
[20] *Ibid*, II. [21] *Ibid*, 50, 121. [22] *Ibid*, 27.

Warren, Major Hathorne, and many others were fined for "taking in of towne common"[23] or incroaching upon the highways. Offenders were obliged to tear down their fences and open again to commons the land which they had inclosed. John Gatshell was fined ten shillings for building upon town land without leave, but the fine was abated to five shillings on condition that he should cut his long hair![24]

It is very pleasant to find that women, who were heads of families, received in early Salem their proportion of planting land.[25] Wallace, in his interesting work on Russia, has shown how in the town meeting or village *Mir* of that country, the women have their voice in the matter of distributing communal land, and a very high-keyed voice it is said to be. In Russia the women have not such a delicate consideration for the feelings of the other sex, as used to be shown by Mary Starbuck in the Island of Nantucket, who often addressed town meetings in her husband's name (for he was a bashful man), and always prefaced her remarks by these gracious and winning words: "Mr. Moderator and Fellow townsmen! My husband thinks,"—so and so. To be sure, Russian widows have no husbands, but a tender allusion to the dear departed would certainly be more likely to influence a jury of fellow townsmen than angry vituperation. It is, however, very curious that in Russia the object of feminine anxiety is to have as small an amount of land as possible, for land signifies taxes. Land is actually imposed upon Russian widows if they have sons old enough to engage in farming. In Salem and Plymouth and the towns along Cape Cod, women could not get enough land. Still, in Salem, Tom More's widow drew her ten acres. Mistress Felton, "vidua," and her son Nathaniel received twenty acres. A

[23] *Ibid*, 46, 101, 105, 164, 190, 216. [24] *Ibid*, 55.
[25] Town Records of Salem, i, 21–27.

very large grant of one hundred and fifty acres was promised Mrs. Higginson, if she should come, but this liberality was because of a special contract made with her late husband by the Massachusetts Company. Widow Mason received twenty acres and Widow Scarlet, thirty. Evidently, the amount of land in both cases was determined by the size of the family.

It is, on the whole, rather disappointing to find that maidens or spinsters did not fare quite so well in the distribution of land as the numerical claims of that class in society would seem to justify. The town fathers of Salem began well by granting so-called "maids lotts," but very soon this course began to be looked upon as highly indiscreet, for, in the records, we find a note in Governor Endicott's own handwriting, to the effect, that, in future, the town desired to avoid "all presedents & evil events of graunting lotts vnto single maidens not disposed of!" Hereafter, "it is ordered that noe single maiden not disposed of in marriage,"—and then follows in the record a painful blank. At this point in his writing the Governor evidently came to a realizing sense of the odious Act he was about to inscribe in the local statutes, and he at once ran his pen through the entire passage. But he did not improve very much upon the phraseology of the law against single maidens by resorting to this expression, "for the avoiding of absurdities!"[26] The Governor attempted to refine his language, but he persisted in his cruel purpose. Deborah Holmes was refused land "being a maid," but the Governor endeavored to be kind, for he gave her a bushel of Indian corn! This maiden was evidently of mature years and well content to take care of herself, but the Governor and the Selectmen assured her that it "would be a bad president to keep hous alone."

[26] Town Records of Salem, i, 28, 32.

IV.

COMMON FIELDS

IN

SALEM.

The reproduction of the old English system of Common Fields, or associate ownership of land for tillage and pasture, is a curious chapter in the agrarian history of early New England towns. Nearly all of them had the system to a greater or less extent. The writer has discovered evidence of its general prevalence throughout the Plantations of Plymouth Colony, where to this day there are many remarkable cases of survival, especially upon Cape Cod. But evidence is not lacking of the long continuance of this ancient system upon a large scale in Salem, the oldest of towns in the Colony of Massachusetts Bay. In the year 1640, there were in Salem no less than ten Common Fields of associated proprietors, who fenced more or less in common, under the supervision of fence viewers or surveyors of fences, who were appointed in Town Meeting. There was a special committee for each field. In the course of the seventeenth and eighteenth centuries,

most of these old communal proprietorships were broken up into individual and separate holdings, but the North Fields and the South Fields, which are spoken of as early as 1642–3, continued as Common Fields down to about the middle of the eighteenth century, and are still frequently referred to by citizens of Salem who are conversant with the traditions of the Fathers. The Rev. Charles T. Brooks, in his poem delivered September 18, 1878, at the commemoration of the fifth half century of the landing of Endicott, refers to the ancient Common Fields, so familiar to the early settlers:

> "North Fields and South Fields little dreamed that day
> Of horse-cars running on an iron way."

In the Rev. William Bentley's "Description of Salem,"[1] published in the year 1800, the old North Fields are spoken of as "the lands lying north of North river" and as containing "four hundred and ninety acres." He speaks of "an hill called Paradise, from the delightful view of the western part of the town." He says that South Fields "are the lands included between Forest and South rivers, and are divided from the great pasture by the Forest-river road. These lands are in good cultivation. Near the town are some settlements; the rest remain in farms and lots, possessed by the inhabitants of the town. . . . . The South Fields contain six hundred acres."[2] Certain parcels of ungranted or unoccupied land in the old North Fields remain common to this day, for example the tract of four or five acres known as "Liberty Hill," now used as a public pleasure ground. A few years ago there was considerable discussion in Salem as to the ownership of such tracts. It was the opinion of a prominent legislator,

[1] Collections of the Massachusetts Hist. Soc., 1st Series, vi, 218.
[2] *Ibid*, 217.

Hon. Charles W. Upham, then Mayor, in a report on the Common Lands of the City of Salem in 1852,[3] that "Liberty Hill or any other unappropriated lands, if any there be in North Fields, belong to the proprietors of that district by a sort of special commonage, but cannot be disposed of, or appropriated by them, without the consent of the town first had and obtained. This seems to have been the principle upon which the North Field common lands were administered."

This opinion is sustained by the fact that at a Salem town-meeting, March 8, 1684, it was voted that the proprietors of North Fields, or the major part of them, should have liberty to make such orders, from time to time as they should find necessary for the sufficient fencing and well improving of the said fields, and all such orders made by them, relating to the premises, being presented to the Selectmen and approved of by them were to hold good. But the Selectmen had the right of veto, showing that the authority over common fields which were owned by an individual proprietary was still vested in the town.

A local incident in American Revolutionary history, related by Mr. Felt in his Annals of Salem, well illustrates the independent spirit which characterized the ancient proprietors of North Fields, an agrarian commonwealth within the larger self-governed community of Salem. When Colonel Leslie, commander of a detachment of British forces, was directing his march towards the "hill called Paradise" in order to seize the artillery which had been hidden there, he found the road through North Fields blocked at a certain bridge, which still belonged to the old proprietors, although the Common Field had been

[3] Salem City Documents, for year 1852, p. 30. The writer's attention was called to this opinion of the late Hon. Charles W. Upham by Mr. Robert S. Rantoul of Salem.

broken up for more than a quarter of a century. The Colonel remonstrated with the farmers for obstructing the King's highway. "This is not the King's highway," said one of those sturdy yeomen. "This is a private way belonging to the proprietors of North Fields." Graphic accounts of the memorable scene at North Bridge are to be found in the printed speeches of Henry L. Williams, George B. Loring, and Edmund B. Willson, on the occasion of the Centennial Anniversary of Leslie's expedition to Salem, which invasion of local rights occurred February 26, 1775. "This deliberate, open resistance," said Mayor Williams, "by our townsmen to the decrees of the crown took place about seven weeks before the resistance at Lexington and Concord." There is not the shadow of a doubt, if Colonel Leslie, the officer sent from Boston by General Gage to take away the Salem guns, had offered violence to the North Field farmers, that the American Revolution would have flamed out then and there, for the yeomen were armed for battle; the local militia men were prepared, if necessary, to defend the Bridge. "You had better not fire," said John Felt, a plain-spoken townsman who had been remonstrating with Leslie; "you have no right to fire without further orders, and if you do fire you are all dead men. For there," said Felt, pointing to the assembled townsmen, "is a multitude, every man of whom is ready to die in this strife." And Leslie did not fire. Another leading man came forward and expostulated further with Leslie. "And who are you, sir?" demanded the British Colonel. The man replied, "I am Thomas Barnard, a minister of the gospel, and my mission is peace." He had come with his congregation from the old North Church, when the alarm arose that Sunday morning, "The regulars are coming!" The whole town poured out, and nothing but the entreaties of the minister induced them to

lower the draw-bridge and allow Leslie to march over a few rods on condition that he should march straight back again without any further aggressions on proprietary rights. This withdrawal without seizing the guns cost Leslie his commission, but it prevented Salem Common Fields from becoming the first battle ground of the American Revolution.[4]

One summer, a few years ago, in the Bodleian Library of the Essex Institute, at Salem, through the kind offices of Dr. Henry Wheatland and Mr. William P. Upham, there came into the hands of the writer a rare old manuscript. It was not one of the lost books of Livy, neither was it Cicero's missing treatise *De Gloria*, which was lost by Petrarch's poverty-stricken old schoolmaster who was forced to pawn it for bread. The Salem manuscript was no scholar's work. No monk had illuminated its pages; no humanist had revised its text. The Salem manuscript was characterized chiefly by bad writing, bad spelling, and by its general resemblance to the most primitive town records in New England, records kept oftentimes upon old account-books. There was nothing externally attractive about this dingy old manuscript, but it had for the student of New England local history more interest than a beautiful church missal or a classic palimpsest would have afforded, if found in that library of the Essex Institute. For this manuscript was the original record of the Proprietary

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[4] Felt, Annals of Salem, i, 185. See also a Salem City Document (1875) entitled "Memorial Services at the Centennial Anniversary of Leslie's Expedition to Salem, Sunday, February 26, 1775." See also "Leslie's Retreat" by C. M. Endicott, in Proceed. Essex Inst., i, 89. Also, Essex Inst. Hist. Coll., Vol. xvii, pp. 190–92.

No special mention was made in these Memorial Services held in the North Church, of the proprietors of North Fields and of their Declaration of Independence; and yet this is one of the remarkable assertions of the local spirit which kindled the American Revolution. It was the surviving spirit of an old English agrarian community, an Institution older than the Crown of England, asserting its sovereign, immemorial right to its own property.

of the South Fields in Salem, an old agrarian community, the survival of an institution which was old when the Christian Church and the Roman Empire were young. The system of land community and Common Fields, with small individual allotments held under joint control, as instituted at Salem and Plymouth, reminds us of those old Roman days described by Bradford, the historian of Plymouth Plantation, in the words of Pliny (lib. 18, cap. 2): "How every man contented himselfe with 2 acres of land, and had no more assigned them." And chap. 3. "It was thought a great reward, to receive at ye hands of ye people of Rome a pinte of corne. And long after, the greatest presente given to a Captaine y^{t} had gotte a victory over their enemise, was as much ground as they could till in one day. And he was not counted a good, but a dangerous man, that would not contente himselfe with 7 Acres of land. As also how they did pound their corne in morters, as these people were forcte to doe many years before they could get a mille."[5]

The records of the South Field Proprietary are incomplete. They do not open until the year 1680. Originally they covered a period from at least 1672 to 1742. But what was true of later times was probably also true of the earlier. There is but little change in agrarian customs.

[5] Bradford, History of Plymouth Plantation, Collections of the Massachusetts Hist. Soc., 4th Series, vol. 3, 168. For an interesting account of this original source of New England history, and how it was stolen from the tower of the old South Church in Boston, during the American Revolution, when that church was used for a riding school and stable by British soldiery, see the Editorial Preface by Mr. Charles Deane; see also an interesting paper on "Governor Bradford's manuscript History of Plymouth Plantation and its Transmission to our Times," by Professor Justin Winsor, of Harvard College, a paper read before the Mass. Historical Society, Nov. 10, 1881. The existence of this priceless manuscript in the library of the Bishop of London, at Fulham on the Thames, was accidentally discovered years ago by members of the Massachusetts Historical Society, which had a copy made from the original, and this copy was published by the Society in 1856. It is one of the surviving shames that the original manuscript, stolen probably by some British soldier, has never yet been restored by England to New England.

In an old town on Cape Cod we have examined a continuous series of Commoners' Records from the latter part of the seventeenth century down to 1880, and have found scarcely any change in the character of votes or the modes of business procedure. In order, however, that there may be no question as to the nature of these old Common Fields at the time when there were ten of them in the one town of Salem, let us cite a few extracts from the Massachusetts Colony Records, which supply most admirably all missing evidence concerning the period before 1680. In the spring of 1643, the year the Massachusetts colony was divided into four shires, with Salem heading the list of Essex towns, it was ordered by the General Court, "For preventing disorder in corne feilds w^{ch} are inclosed in common, ... that those who have the greater quantity in such feilds shall have power to order the whole, notwithstanding any former order to the contrary, & that every one who hath any part in such common feild shall make and maintaine the fences according to their severall quantities."[6]

In the fall of the same year was passed an Act which leaves no doubt as to what was meant by the ordering of a field. "Whereas it is found by experience that there hath bene much trouble & difference in severall townes about the manner of planting, sowing, & feeding of common corne feilds, & that upon serious consideration wee finde no generall order can provide for the best improvement of every such common ffeild, by reason that *some consists onely of plowing ground, some haveing a great part fit onely for planting, some of meadowe and feeding ground;* also, so that such an order as may be very wholesome & good for one feild may bee exceeding preiudiciall & inconvenient for another,—it is therefore ordered, that

[6] Mass. Col. Rec. ii, 39, 195.

where the commoners cannot agree about the manner of improvement of their feild, either concerning *the kind of graine that shalbee sowen or set therein, or concerning the time or manner of feeding the herbage thereof*, that then such persons in the severall townes that are deputed to order the prudenciall affaires thereof, shall order the same, or in case where no such are, then the maior part of the freemen, who are hereby enioyned w^th^ what convenient speed they may to determine any such difference as may arise upon any information given them by the said commoners; & so much of any former order as concerns the improvement of common feilds, & that is hearby provided for, is hearby repealed."[7] But four years later, the Court went back to the old system, leaving the regulation of Common Fields entirely in the hands of the majority of interested proprietors.[8] The above order is significant of the actual survival in New England of old English agrarian customs.

The practice of allowing the selectmen, in so-called private Town Meeting, to regulate the management of Common Fields seems, from the town records of Salem, to have been already in vogue in this place before the passage of the above Act, at least as regards the control of common fences and the regulation of pasturage upon the stubble lands. In the spring of 1638, it was ordered by Mr. Endicott, John Woodbury, and the rest of the Town Fathers, "fforasmuch as divers of our towne are resolued to sowe English graine this spring . . . that all common & particular home ffences about the towne shall be sufficientlie made vp before the twentieth of the ffirst moneth next [April] vppon the payne or penaltie of 5 s. euerie day after that any one is defectiue therein."[9]

One of the most extraordinary features of this old

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[7] Mass. Col. Rec., ii, 49. [8] *Ibid*, 195. [9] Town Records of Salem, i, 84.

system of common husbandry, as practised in early Massachusetts, was the impressment of artisans by the town constable to aid farmers in harvest time. This undoubted power of the community over the time and labor of its individual members, a power seen in very recent times when constables impressed labor for mending the town roads, is a connecting link between New England towns and old English parishes. The following is the exact text of a colony law (1646), upon this matter of impressing labor in harvest time: "Because y^e^ harvest of hay, corne, flax, & hemp comes usually so neare together y^t^ much losse can hardly be avoyded, it is ordered & decreed by y^s^ Courte, y^t^ y^e^ cunstable of every towne, upon request made to y^m^, shall require artificers or handicrafts men, meete to labour, to worke by y^e^ day for their neighbours needing y^m^, in mowing, reaping, & inning thereof, and y^t^ those whom they help shall duely pay y^m^ for their worke, & if any person so required shall refuse, or y^e^ cunstable neglect his office herein, they shall each of y^m^ pay to y^e^ use of y^e^ pore of y^e^ towne double so much as such a dayes worke comes unto: provided no artificer &c, shalbe compeled to worke for others whiles he is necessarily attending on like busines of his owne."[10] This impressment of laborers for harvest was only the revival of old English parish law,[11] and is precisely the same in principle

[10] Mass. Col. Rec., ii, 180–1.

[11] In Lambard's "Constable, Borsholder, and Tythingman," a curious old volume, published in the year 1610, we find the following law: "In the time of Hay, or Cornharvest, the Constable, or any such other Officer, vpon request made, and for avoiding the losse of any corne, graine, or hay, may cause all such Artificers and persons (as may be meete to labour) by his discretion to serve by the day, for the mowing, reaping, shearing, getting, or inning of corne, graine, or hay, according to the skill and qualitie of the person; and if any such person shall refuse so to doe, then ought such Officer (vnder the pain of fortie shillings) to imprison such refuser in the Stockes, by the space of two daies and one night." See also 5 Eliz. cap. 4. This law appears to have been in operation in England down to very recent times, see J. W. Willcock, The Office of Constable (England, 1827; Philadelphia, 1840, p. 38).

as the requirement of local militia by the Selectmen to perform escort duty in the transportation of grain from the frontier towns to places of greater security.[12] The case of Captain Lathrop of Beverly, and his company, "the very flower of the county of Essex," as Hubbard calls them, will naturally recur to the Salem mind. These men were sent as a guard to some planters who were coming down the shore of the Connecticut river from Deerfield to Hadley with wagon-loads of grain and household goods. In crossing Muddy Brook, now called Bloody Brook, the company which was marching carelessly (some of the soldiers having put their guns in the carts, in order to be free to gather grapes) were suddenly attacked by Indians from the adjoining swamps, and nearly the whole band of soldiers and planters were cut off.[13]

Returning now to the old records of the South Field Proprietary, let us examine a few illustrative extracts, which, to the outside world, will doubtless be more interesting in their original form than they would in any modern paraphrase: "It is ordered & voated by the proprietors of the Southfield that the proprietors shall meet on the last Tuesday in ffebruary, every year for the making such orders as may be needfull for the Good of the Southfield, & it is left to the moderator & the Clarke[14] to appoint the place where they shall meet & this shall be accounted sufficient warning without any further notice Given of the tyme when to meet, & it is farther agreed that such as doe meet shall pay Sixpence each person to be spent at the house where they meet [at a tavern?] and such as doe not meet on that day shall pay eighteen pence

[12] Mass. Col. Rec., v. 66.

[13] Judd's History of Hadley, 147–9. Edward Everett's Oration at Bloody Brook. Washington Gladden, From the Hub to the Hudson. Several grandchildren of the old planters of Salem and Beverly perished in that terrible massacre at Bloody Brook, Sept. 18, 1675. See Essex Inst. Hist. Collections, Vol. xix, pp. 137-142.

[14] In this mode of spelling "clerk," we have a suggestion of its original pronunciation. Compare also the family name, 'Clark.'

Each person for non appearance and this to stand as a Constant order Continually, the tyme of the day is to be at one of the Clock." The proprietors sometimes met at a private house, and perhaps occasionally in the open fields. The proceedings at a proprietor's meeting were always conducted according to rules of parliamentary procedure. A New England man, in reading the old Commoners' records of Salem, would be chiefly impressed by the fact that here is described a miniature Town Meeting. A moderator is always chosen; a clerk records the proceedings; surveyors (not of highways) but of fences are appointed; field drivers are chosen; and taxes levied.

Among the officers chosen at a Commoners' meeting was the Hayward, or, as he is sometimes called in the later town records, "the watchman upon the walls of the pasture." Old Homer's ancient men, watching from the walls of Troy the conflict of human cattle, were hardly more ancient than this time-honored agrarian office. The swineherd of Odysseus was a near kinsman of the Saxon Hayward. The office had nothing whatever to do with haying, or with grass-lots, as the name might at first seem to imply. It is derived from the Saxon *Hege* (German *Hag*, English hedge) and means the warden of the hedges or fences. Many Germanic places derive their names from the hedge with which they were originally surrounded (*e. g.* Wendhagen, Grubenhagen, the Hague). In fact the word town means only a place that is hedged in, from the old German *Zun* or *Tun*, modern German *Zaun*, meaning a hedge. The office of hayward was originally constabulary in character. He was appointed in feudal times in the Court Leet (German *Leute*), or popular court of the Norman manor and English parish, thus coming down into the parish life of New England.

Let us now glance at the duties of the ancient watchman of the old South Field. "Voted, That the Gates att both

Ends of the field be made good & well repaired. And that the Little Gates Especially be Made and Hung so as to be easy for Travellers to pass at the Charge of the proprietary, and that the Haywards accordingly are Desired & Impowered to do it & to Render an Account of the Charge the next proprietors meeting" . . . . . "Voated that the Haywards . . or any of the proprietors of the Southfield shall have power to take up & Impound any horse kind or any other cattle w^{ch} shall be found loose upon his own ground or the grounds of any other proprietor of the Southfield feedings unless they be tyed & that none shall tether in the night time vpon the penalty of what the law doth determine in case of Damage fleazant [faisant]. And this to be from the tenth of April [more usually 25 of March] to the 14th of October . . & that the ffield be drove by the Hayward the 10th of April & not to be broken open till 14th October next."[15] This custom of clearing the Common Field of all creatures in the spring and of breaking down the barriers again in the fall, so that the cattle of the whole village may pasture upon the stubble, is quite parallel to the Old English[16] Lammas lands, which belong to individuals but are subject to certain rights of commonage. Lammas day, when the fences of the Common Fields were thrown down, was the occasion of a village festival in old England.

It will be remembered that in old England there were two sorts of pasturage in Common Fields, whence crops had been gathered, (1) stinted, (2) unstinted. The latter

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[15] A similar order, taken from the latter part of the South Field Records (1741) is even more striking than the above which bears the date of 1695: Voted, That no Person shall Teder any Horse Kind Cattle &c in said field, in the Night time, Nor in the Day time, Neither shall any Persons Bait their Creatures *on their own Land* on Penalty of forfeiting their Herbage, save only while they are at work there . . . the Haywards to Judge of the Same and to Debar them of their Herbage in the fall according to their Discretion or Have Power to take their Creatures from their Tedering Ropes & Impound them which they shall think most proper."

[16] Laveleye, Primitive Property, 114, 241.

must have been customary at Salem during the early part of the seventeenth century, but at the time the records of the South Field begin, 1680, stinted pasturage was the rule. In that year it was voted "That on ye 14 of October next ye Proprietors have Liberty to put in Catle For Herbige . . y^{t} is to say 6 Cows 4 Oxen 3 Horses or 12 Yearlings or 24 Calves to 10 Acors of Land and so in proportion to Greater or Lesser Quantities of Land According as they Have & no person shall Cutt or Stripe their Indian Corne Stalkes after they have gathered their Corne on penaltie of forfiting Herbidge." At first sight, such a law might seem merely the resultant of local conditions, and of the somewhat commonplace discovery that Indian corn-stalks were good for foddering cattle. But there were similar laws in the agrarian communities of old England at this period. Gleaners had definite rights, and it was required that grain-stalks should be left at a certain height for the benefit of the village cattle. It appears from the South Field records that rights to "herbage" could be leased and transferred; "When the proprietors Shall put in their Creatures for Herbage they Shall Give an Account to the Haywards of the Number of the same And Whosoever shall Hire Herbage of any person Shall bring from Under the Hand of the Leasor for so much as he Hires to the Haywards by the 14 of October Next." Two other points are especially worthy of attention. First, many of the lots in the South Field appear to have been very small, a half acre, three quarters of an acre, an acre, and so on, in such small proportions. Second, bits of common land lying in the great field were granted out by the Proprietary to individuals for a term of seven years.

V.

SALEM

MEADOWS, WOODLAND, AND TOWN NECK.

We have examined the subject of common fields, where planting lands were associated together under certain communal laws as regards the choice of crops, the regulation of fences, the reservation of herbage, and the employment of the lands of individuals for a common pasture in the fall of the year. We have seen that the old English system of land community was reproduced at Salem in some of its most striking features. Let us now briefly consider the topics of common meadow, common woodland, and common pasture, in the full sense of that term. In these matters we shall find that the old English customs were still more minutely followed. The first item of interest, in connection with the subject of common meadow, is the fact that the Old Planters[1] enjoyed such a common all for themselves. It was known as "the Old Planters medow neere Wenham[2] common." And yet even this meadow

[1] Town Records of Salem, i, 76, 138.

[2] Wenham Common is mentioned only once in the town records of Salem, but Wenham Swamps are frequently noticed. These great swamps are interesting because they continued for many years common to both Ipswich and Wenham, as were certain swamps to Plymouth and Plympton. By an Act of the Province legislature in 1755, the proprietors of Ipswich and Wenham were authorized to meet and prohibit the general use of Wenham Great Swamp as a common pasture, in order that the growth of wood and timber might not be hindered. (Province Laws, iii, 799.)

Wenham is a curious case of one town budding from another. It appears from the Massachusetts Colony Records (i, 279) that the inhabitants of Salem agreed to plant a village near Ipswich River and the Court thereupon ordered, in 1639, that all lands lying between Salem and said river, not belonging by grant to any other town or person, should belong to said village. In 1643, it was ordered by the Court that "Enon" be called "Wennan" and constitute a town, with power to send one deputy to the General Court (ii, 44). Johnson, in his Wonder-working Providence (W. F. Poole's ed., 189), calls Wenham Sa-

was under the authority of the town, for it was ordered in 1638 "that the meadow that is in common amongst some of our Brethren Mr. Conant & others shall be fenced in the ffirst day of April & left common again the last of September euery yeare." This signifies that a piece of grass-land common to a little group of men for mowing was also common to the whole town for pasture in the fall.[3]

The whole town of Salem once had its common meadows, just as did the town of Plymouth,[4] where the practice continued long after the partnership with the London merchants was dissolved. In both places, it was long customary in town meeting to assign lots where men should mow for one year, or for a longer period. The word "lot" as applied to land carries a history in itself. In 1637, it was ordered by the selectmen of Salem "that all the marsh ground that hath formerlie beene Laid out for hay grass shall be measured."[5] This was the first step towards the allotment of the Salem meadows. Before this time they had been absolutely common, as is clear from a vote like the following, passed in 1636, by the Selectmen: "Wm. Knight Rec[d] for an inhabitant, but noe Lands to appropriat vnto him but a 10 acre lott, & *common for his cattle grasse*

lem's "little sister." He says Salem nourished her up in her own bosom till she became of age, and gave her a goodly portion of land. "Wenham is very well-watered, as most inland Towns are, the people live altogether upon husbandry, New England having trained up great store to this occupation, they are increased in cattle, and most of them live very well, yet are they no great company; they were some good space of time there before they gathered into a Church-body" [1644].

[3] Mr. William P. Upham, in the bulletin of the Essex Institute, ii, 51, says, in 1653 the town granted to George Emery the herbage of that parcel of land which was John Woodbury's in the old planters' marsh and all right of commonage the town might have claimed to him and his heirs forever, and in 1658, to Wm. Hathorne the town's right and privileges in the planters' marsh. Mr. Upham thinks the marsh was common to the old planters before Endicott's arrival, ii, 52.

[4] Bradford, History of Plymouth Plantation, 216–7. Plymouth Col. Rec., i, 14, 40, 56.

[5] Town Records of Salem, i, 44.

& hay."[6] Eight months after the above order in reference to the measurement of the meadows, it was "agreed that the marsh meadow Lands that haue formerly layed in common to this Towne shall now be appropriated to the Inhabitants of Salem, *proportioned out vnto them according to the heads of their families.* To those that haue the greatest number an acre thereof & to those that haue least not aboue haue an acre, & to those that are betweene both 3 quarters of an acre, alwaies provided & it is so agreed that none shall sell away theire proportions of meadow, more or lesse, nor lease them out to any aboue 3 yeares, vnlesse they sell or lease out their howses wth their meadow."[7] This restriction upon the alienation of allotted land is repeatedly paralleled in the records of Plymouth Plantation, where grants were made to lie to so and so's house-lot in Plymouth and not to be sold from it.[8]

The above division[9] of Salem meadows among the families of the town was managed by the "ffive Layers out," Captain Trask, Mr. Conant, John Woodbury, John Balch, and Jeffrey Massey. In the town records, there is to be seen in the handwriting of Mr. Conant, a list of the heads of families, and before each name stands the number of persons thereby represented. Roger Conant headed a family of nine persons; John Woodbury, six; John Balch, six; Captain Trask, seven; and Mr. Endicott, nine. These heads of households received each an acre, for, by

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[6] Ibid, 28. [7] Ibid, 61, 101–4.

[8] Restrictions upon the alienation of land were very frequent at Plymouth and elsewhere. See Ply. Col. i, 46 (eight cases), 82. Cf. Laveleye, Primitive Property, 118, 121, 152. Mass. Rec., i, 201; Conn. Rec., i, 351; Allen, Wenham, 26; Freeman, Cape Cod, ii, 254; Lambert, New Haven, 163; Bond, Watertown, 995.

[9] The granting of hay-lots by the year to old and new comers went on to some extent after the above division of the common meadow, which doubtless remained common, like the Old Planters' meadow, after the hay had been gathered. The following is a specimen of an annual hay-grant: "Graunted for the yeare to mr. ffisk & Mr. ffogge the hay grasse of the salt marsh medow, at the side of the old Planters fields." Town Rec. of Salem, i, 87.

the town vote, the greatest families could not have more than that amount of meadow. It gratifies one's sense of justice to be assured that Goodwife Scarlet, Mistress Robinson, the Widow More, Widow Mason, Widow Felton, Widow Greene, and "Vincent's mother" received each their proper allowance.

Common of wood, as well as of meadow, was long practised at Salem. It was ordered in 1636, that all the land along the shores on Darby's Fort Side, up to the Hogsties and thence towards Marblehead,[10] along the shore and for twenty rods inland, should be "reserued for the Commons of the towne to serue it for wood & timber."[11] But the privilege of wood commonage was not to be abused. Whatever a townsman needed for fuel, fencing, or building purposes, he could freely have, but it was strictly ordered that "noe sawen boards, clap boards or other Timber or wood be sold or transported" out of town by any inhabitant unless the above be first offered for sale "to the thirteene men."[12] Similar restrictions in regard to the export of timber prevailed in Plymouth Colony.[13] In the early history of Massachusetts, the colonial government, at one time, undertook to regulate the cutting of timber,

[10] Marblehead is an interesting case of a town voluntarily created by another town. Usually legislative action came first and towns were forced to allow the secession of precincts. In 1648, it was declared at a general town meeting in Salem that "Marble Head, with the allowance of the general Court, shal be a towne, and the bounds to be the vtmost extent of that land which was mr. Humphries farme and sould to Marble Head, and soe all the neck to the Sea, reserving the disposing of the fferry and the appoynting of the fferry man to Salem." (Town Rec., i, 156–7). Cf. Mass. Col. Rec., i, 165. "It was proued this Court that Marble Necke belongs to Salem." Cf. Ibid, 226. In 1649, May 2, "Upon the petition of the inhabitants of Marble Head, for them to be a towne of themselues; Salem haveing granted them to be a towne of themselues, & appointed them the bounds of their towne, w^ch^ the Courte doth graunt." Mass. Col. Rec., ii, 266.

[11] Town Records of Salem, i, 17, 34, 112, 196, 219.

[12] Ibid, 30–1. An Act for the Preservation of Timber may be found in the Statutes of the Realm, 27 Eliz. An Act concerning "clap boards" occurs in the 35 Eliz.

[13] Plymouth Col. Rec., Book of Deeds, 8.

by requiring permission therefor from the nearest assistant[14] or his deputy, but this regulation seems to have been of no practical consequence. The matter was tacitly relegated to the towns, and they delegated the execution of their forestry laws to their own selectmen.

We have considered the topics of House Lots, Planting Lands, Meadow Lands and Wood Lands. The first two groups were lands held in severalty, although Planting Lands were common for a part of the year. The three chief categories of strictly Common Land are Wood, Pasture, and Meadow, corresponding to the old German terms, *Wald, Weide, und Wiese.* The reappearance of Common Wood and Common Meadow in the land system of Salem we have already seen. We come now to the last, and, in some respects, the most interesting division of our subject, namely, Common Pasture. This should not be confounded with the temporary pasturing of stubble lands or hay meadows after harvest. Real Common Pasture is always common, and there are usually no allotments of land in severalty.

A recent number of the *Contemporary Review* contains an interesting sketch of customs of common pasturage that still survive in Germany. The article is entitled "Notes from a German Village," and was written by an English professor[15] who spent a summer vacation in the little town of Gross Tabarz, on the northern slope of the Thuringian mountains. "Early every fine morning," he says, "we were awaked by the blowing of the *Kuh-hirt's* horn as he passed through the village, and any one watching his progress would see a cow turned out from one

[14] Mass. Col. Rec., i, 101. Cf. Judge Endicott's Brief, Lynn v. Nahant, 6.
[15] Contemporary Review, July, 1881. Article by Professor Aldis.

outhouse, two more out of a second, and so on, the procession gradually increasing until, on leaving the village, the *Hirt* and his assistant would have from eighty to a hundred and twenty cows and bulls under the charge of themselves and their two dogs. In wandering in the daytime through the forests we often heard from a distance the tinkling of the large bells which the cows carry, and in a few minutes would meet the whole procession coming gently along the high road or narrow lane, somewhat to the alarm of the more timid members of our party, but by no means to the diminution of the picturesqueness of the scene. By six o'clock in the evening the *Hirt* had gathered his flock together, and driven them back to the village, where the ox knows its owner, and, unbidden, each turns into its own stable."

When we read the above description, we were tempted to believe that the English professor had written his story of summer experience upon the basis of old records in Salem. Like the villages of the Thuringian Forest, Salem once had its cowherds, swineherds, and goatherds. They too, of old time, came through the streets of the village blowing their horns, and creatures were turned out to their pastoral care. In the spring of 1641, it was agreed in Salem town meeting that "Laurance Southweeke & William Woodbury shall keepe the milch cattell & heifers . . this summer . . . They are to begin to keepe them, the 6th day of the 2d moneth. And their tyme of keeping of them to end, the 15th day of the 9th moneth. They are to driue out the Cattell when the Sun is halfe an hower high, & bring them in when the sun is halfe an hower high. The cattle are to be brought out in the morning into the pen neere

to Mr. Downings pale. And the keepers are to drive them & bring such cattle into the Pen as they doe receaue from thence." [16]

The duty of village swineherds was similar. Early in the morning they were "to blow their horne" as they went along the street past the houses, and the townsmen brought out their swine to the keeper, who took charge of the drove until sunset, when all returned to town and every townsman received his swine again, which he kept over night in a pen upon his own premises. [17] The cattle were also kept over night by each owner, either in private yards or in the common cow houses. [18] In the morning the creatures were driven to the great Cattle Pen, [19] at the gate of which the herdsmen stood waiting, and, at a certain hour, drove all afield. If a townsman arrived late with his cows, there was no help for it but to follow after and catch up with the herd, or else to be his own herdsman that day and run the risk of his cows breaking into inclosures upon the plantation. [20] The herdsman was originally paid for his services by the town, but afterwards by individuals, at a rate fixed upon in town meeting, usually about four shillings sixpence per season, for the charge of every cow, the settlement being made in butter, wheat, and Indian corn. [21] The cattle of every town were marked with the first letter of the town's name, roughly painted with pitch. Towns whose names began with the same letter, for example, Salem, Salisbury, Sudbury, Strawberry Bank (Portsmouth) were obliged to agree upon differently shaped letters. Salem had a plain capital S; Salis-

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[16] Town Records of Salem, i, 99. For other illustrations of the duties of the Town's Herdsmen, see Felt's Annals, i, 277–80. Herdsmen were employed in the Great Pastures of Salem down to a very recent date. Felt, i, 202.

[17] Hist. Coll. Essex Inst., xi, 36. Town Records of Salem, i, 100.

[18] *Ibid*, 94. [19] *Ibid*, 10, 39, 40, 66. [20] *Ibid*, 41. [21] *Ibid*, 207.

bury, the sign of the dollar, $; Sudbury added an upright dash to the top of its initial S; Strawberry Bank added a straight stroke downward from the tail end of its S.[22]

It is perhaps not generally known that Salem had not only town herdsmen, but actually town cows, town sheep,[23] town dogs,[24] and a town horse.[25] In the town records we read of a "townes cowe" killed by the butcher, and the Selectmen are ordered to sell the beef and hide for the town's benefit. Both cows and sheep came into the possession of the town in settlement for debts or taxes. But a most singular order was that which was passed in Salem in 1645, whereby half a dozen brace of hounds were to be brought out of England, the charges to be borne by the town. These town dogs were probably used for herding cattle or hunting wolves. Perhaps Salem's order was the first suggestion for the Act passed by the colonial legislature of Massachusetts three years later, whereby the Selectmen of every town were authorized to purchase, at the town's expense, as many hounds as should be thought best for the destruction of wolves, and to allow no other dogs to be kept in town, except by magistrates, or by special permit.[26]

Town flocks and herds, and town herdsmen imply the existence of town pastures. The first mention of this subject in the town records of Salem was in 1634, shortly after the division of the ten acre lots. It was then agreed that the Town Neck should be preserved for the feeding of

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[22] Mass. Coll. Rec., ii, 190, 225. [23] Town Records of Salem, i, 185, 189, 195.
[24] *Ibid*, 139. [25] Felt, Salem, i, 281.
[26] Mass. Col. Rec., ii, 252–3, *ibid* for law relating to Sheep Commons. The keeping of greyhounds for coursing deer or hare, and of setters for hunting, was forbidden in the parishes of Old England. See Lambard's Constable (1610) 81, and the statute I Jac., Cap. 27.

cattle on the Sabbath. Individuals were forbidden to feed their goats there on week-days, but were required to drive them to one of the larger Commons, so that the grass upon the Neck land might have a chance to grow for pasture on the Lord's day.[27] For Salem, the Town Neck was a kind of home-lot for baiting the town's cattle. In old England such a pasture would have been termed a *Ham*. William Marshall, an English writer of the last century, in describing the agrarian customs of his country, says: "On the outskirts of the arable lands, where the soil is adapted to the pasturage of cattle . . . one or more stinted pastures, or *hams*, were laid out for milking cows, working cattle, or other stock which required superior pasturage in summer."[28] The practice of stinting the Neck land for pasture must have begun at a very early date, but not much is said about the matter in the published volume of the town records (1634–1659). However, the following vote of the old Commoners, in the year 1714, will serve to illustrate the principle as applied to a permanent town pasture: "Voted, that y^e^ neck of land to y^e^ Eastward of the Block house be granted and reserved for y^e^ use of y^e^ town of Salem, for a pasture for milch cows and riding horses, to be fenced at y^e^ town's charge, and let to y^e^ inhabitants of y^e^ town by y^e^ selectmen and no one person to be admitted to put into said pasture in a summer more than one milch cow or one riding horse, and y^e^ whole number not to exceed two and a half acres to a cow and

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[27] Town Records of Salem, i, 9.

[28] Laveleye, Primitive Property, 245, cf. 59. Nasse, in his Agricultural Community of the Middle Ages, p. 10, quoting Marshall, observes: "Every village . . in the immediate vicinity of the dwelling-houses and farm-buildings, had some few inclosed grass lands for the rearing of calves, or for other cattle which it might be thought necessary to keep near the village (the common farmstead or homestall)."

four acres to a horse; y^e^ rent to be paid into y^e^ town treasurer for y^e^ time being for y^e^ use of the town of Salem."[29] Authority to stint common pasturage was given by the colonial legislature to the selectmen of every town in the year 1673.[30]

It is noteworthy that a part of the Neck lands continued to be used, and was specially known as a Town Pasture until long after the middle of the nineteenth century. According to a survey made in the year 1728, there were at that time about one hundred and three acres of land in the Town Neck, a part of it having been planted by poor people holding cottage rights during the town's pleasure. In 1735, that part of Winter Island which was not needed for drying fish was let out with the Neck as a common "town pasture," and so both Neck and Island continued to be used together with a common stint, *e. g.*, "2½ acres to a cow & 4 to a horse," but with special preference allowed to inhabitants dwelling nearest the Neck. In 1765 the town authorized its treasurer to let the Island and the Neck together for the pasturage of seventy-two milch cows at 10s. 8d. In 1824 Winter Island was annexed to the so-called Alms House Farm, which, by this time had enclosed about ninety acres of the old Neck lands. Instead of the town's cattle, the town's poor were now fed in commons upon the Town's Neck. It is a curious and instructive commentary upon the transformation of communal institutions, that an old Town Pasture should become the material basis for a Town

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[29] Report of the City Solicitor on the sale of the Neck Lands, communicated to the City Council, Dec. 27, 1858. To Judge Endicott's valuable report we have been greatly indebted for facts in the paragraph concerning Winter Island and the Town Neck. Cf. Felt's Annals of Salem, i, 191–2.

[30] Mass. Col. Rec., iv, Part 2, 563.

Farm and a Hospital.[31] The twenty-three acres remaining from the Neck land passed under the control of the Overseers of the Poor, who annually appointed a Hayward and voted when the town or city of Salem (city since 1836) might drive its cows afield. Of course a fixed rate was now demanded for every creature and accommodations were strictly limited. There used to be gates leading into the Town Pasture upon the Neck. They seem to have lasted until a comparatively recent period, for a Salem poet of our time has sung their praises.

> What rapturous joy
> Kindles the heart of an old Salem boy,
> As he returns, though but in thought, to take
> That old familiar walk "down to the Neck!"
> The old "Neck Gate" swings open to his view,
> At morn and eve, to let the cows pass through.[32]

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[31] "In 1747, a committee having been appointed to select a site for a pest house, reported Roache's Point on the Neck (where the work house now stands), and recommended one to be built there. The Town accepted the report, and voted a sum to build it, "and that Roache's Point be the place for erecting said house" (see above Report, 13). "It also appears from the records that the town exchanged certain portions of the land received from the commoners, about five acres, for land belonging to Allen's farm at Roache's Point and at Pigeon Cove. And in 1799, a hospital was built for small pox patients, which was standing within the last twenty years" (*ibid*, 14).

We note that a Work House was ordered by the town of Salem, March 16, 1770, to be placed on the northeast part of the present Town Common or Training Field. Some very interesting rules for the management of a parish Work House, which is an Old English institution, may be found in the MS. Town Records of Salem under the date of March, 1772.

[32] From Mr. Brooks' poem, previously mentioned.

VI.

THE GREAT PASTURES OF SALEM.

ORIGINALLY there were still larger Town Pastures in Salem than the Town Neck. These were known as Cow Pastures or the Cattle Range. In 1640 it was resolved by the Town that none of the Commons within the Cattle[1] Range should henceforth be granted to any individual use. The boundaries of this great tract, known as the Cattle Range, are described in the original records as beginning at the head of Forest river, where fresh and salt water meet, and as extending thence southward, and up to Mr. Humphrey's farm,[2] thence to the pond, "and so about to Brooksby," or to the present town of Peabody. The area of this great Common Pasture once embraced about four thousand acres, and what remains of it is known to this

[1] Town Records of Salem, i, 108, 109. Felt, Annals of Salem, i, 199.

[2] "It is agreed that Mr. Humfrey his ground shall begin at the clift, in the way to Marble Head, wch is the bound betwixt Salem and Linn & so along the line between the said townes to the rocks, one mile by estimation, to the great red oake marked," etc. See Mass. Col. Records, i, 226. Mr. Humfrey's Farm was the historic germ of Swampscott. He was one of the six original patentees of the Massachusetts Colony.

day as the Great Pastures of Salem. They now embrace about three hundred acres and are a familiar land-mark to every native of the region. A local bard has not forgotten them in his enumeration of the attractive features of this ancient town:

> "The old town-pastures have not passed from sight,
> 'Delectable Mountains' of his childhood—there
> They stretch away into the summer air.
> Still the bare rocks in golden lustre shine,
> Still bloom the barberry and the columbine'
> As when, of old, on many a 'Lecture Day,"
> Through bush and swamp he took his winding way,
> Toiled the long afternoon, then homeward steered,
> With weary feet and visage berry-smeared." [3]

The division of the original Cattle Range or Town Pastures among the various parishes and dependents of Salem is one of the most important chapters in her local history, although it has received little attention. The witch trials, which occurred only a few years before the passage of Salem's agrarian laws, have quite eclipsed them in the popular mind, which always dwells upon the phenomenal element in human history rather than upon natural and underlying laws. The communal spirit, implanted and fostered in the parishes of Salem by the acquisition and administration of common land, was of more vital and enduring consequence in the history of that town than any temporary obscuration of the common sense, chronicled as one "dark day." Agrarian laws, or the administration of the *ager publicus*, acquired by conquest, constitute the real economic history of Old Rome, and we may well believe that the long conflict between the Old Commoners, or Patricians, with the Cottagers, or Plebeians, of Salem was of great moment in the upbuilding of this village commonwealth. The grounds of the conflict

[3] From the Rev. Charles T. Brooks' poem, previously mentioned.

were as deep-seated as the aristocratic class-distinctions of Old England, which are felt in New England to this day; and the results of the conflict are as lasting and potent for good as the freehold land tenure, which in Salem, as elsewhere, evolved for many poor cottagers, or landless inhabitants, out of the ancient Town Domain.

In a former chapter it has been shown that many poor people, workingmen, servants, and fishermen, were received into the town of Salem simply as inhabitants, oftentimes with the right of building a cottage upon some bit of waste land, but without any recognition as landed proprietors. Some of these poor people were granted house-lots, to be held during the town's pleasure. These so-called "cottage-rights" were akin to the shanty-rights that are sometimes temporarily allowed to Irish squatters along the lines of our American railways, or upon the waste and unoccupied land of our towns and cities. Such privileges, when accorded by any real authority, were like the Old English cottage-rights, whereby poor peasants were allowed to build a hut or cottage upon the lord's waste land, the common land of the manor. Upon this waste, the peasants usually enjoyed certain rights of commonage; for example, to wood, turf, and pasturage; and they often cultivated in common certain portions of arable land and gathered the hay from certain common meadows, paying their lord in produce or in base services for the privilege of retaining these immemorial customs. In the Middle Ages, such tenants were variously known in manorial records as *Cottagii*, *Coterelli*, *Cotlandarii*, *Coterii*, *Bordarii*, *Cotmanni*, any one of which terms signifies much the same as Cottagers.[4]

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[4] For the best discussion of the English Cottagers, see Professor William F. Allen's paper on "The Rural Classes of England," 4, 5, 8, 10, 11. Cf. Laveleye, "Primitive Property," 22, 247.

Many of the first settlers of New England were, in economic respects, akin to this class of Cottagers. More of our New England colonists than is commonly supposed belonged in Old England to the landless class, and, like all emigrants since the world began, most of them left their native country in order to improve their economic condition. Many of these English emigrants were so poor that they came out to America as indented servants, virtual serfs, until they could work out their freedom. By an express order of the General Court of Massachusetts, no servant could have any land allotted him until he had faithfully completed his term of service;[5] and, in Salem, men who had yet to serve were absolutely refused recognition as inhabitants of the town.[6] Of this class of men, who were the slaves of English capital, Salem undoubtedly had its share. The Reverend John White, in his "Planter's Plea," speaks of three hundred colonists, "most servants," who were sent over to Salem by the Massachusetts Company; and Barry, the historian of Massachusetts, admits that there were originally one hundred and eighty servants sent to that town.[7]

In Massachusetts, stock companies, in which, by the way, the governments of both town and colony originated, took the place of what, in Old England, had been a feudal or manorial regime. English capital, and the spirit of corporate association for economic purposes, were fundamental facts in the colonization and local upbuilding of Massachusetts. Although landless men acquired freeholds by patient industry in the older towns, or by adoption into westward moving companies, yet, in the beginning, these men had a struggle for existence almost as hard as

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[5] Mass. Col. Records, i, 127. [6] Town Records of Salem, i, 47.
[7] For references, see chapter on the "Origin of Salem Plantation."

that of poor men in Ireland to-day. Undeniably there was an aristocratic aversion on the part of our thrifty Puritan forefathers against granting land to new comers, unless they were men of some property. This feeling was entirely natural. Our forefathers were brought up in the English parishes, and they regarded with contempt all paupers and vagabonds.[8] To this day the old feeling survives in New England, and a poor man who gets anything out of one of our towns gets it by the hardest. In Salem and in the first Plantations of Massachusetts, the poor white trash of the period had greater difficulties to contend with than it did originally in Virginia, for the communal spirit, intensified by the Puritan idea, not only forbade dispersion and squatter sovereignty, but wisely kept the control of the commune in the hands of good, substantial citizens, who were able to pay taxes and help support preaching.

In the year 1660, it was enacted by the General Court of Massachusetts that, after that date, no cottage or mere dwelling house, except such as were already in existence or should thereafter be erected by town consent, should be admitted to the right of commonage, which, in those times, meant chiefly the right of pasturing town-land. This Act,[9] although indicating a continuity of the ancient communal spirit, marks nevertheless the first important concession to the plebeian element in our Massachusetts towns. The concession was as necessary as it was important for the economic evolution of the original narrow communes. The ranks of the cottagers, originally landless men, but now in many cases possessed of small holdings by thrift and purchase, had been greatly strengthened

[8] For an early law against Vagabonds and Tramps, see Mass. Col. Records, iv, Part 2, 43.

[9] Mass. Col. Records, iv, Part I, 417.

by the so-called "New Comers," a wealthier class who had pressed into the village communities of Massachusetts and who, by reason of their wealth, had obtained lands, although like the Cottagers they were kept out of any dividend of the Commons. Towards the close of the seventeenth century these New Comers and the Cottagers, or the *Novi Homines* and the *Plebs* of our New England towns, became a very strong party, so strong, indeed, in some communities, that they overthrew the patrician element, or the descendants of the Old Comers, and carried town meetings by revolutionary storm.[10]

In the year 1692, the General Court, still under the influence of the patrician party in the towns, determined to allow a division of the Common Lands "by the major part of the interested" proprietors, but it was carefully enjoined, as in 1660, that "no cottage or dwelling-place in any town shall be admitted to the privilege of commonage of wood, timber and herbage, or any other privileges which lie in common in any town or peculiar, other than such as were erected or privileged by grant before the year one thousand six hundred sixty-one, or that have since, or shall be hereafter granted." This Act[11] of 1692 is the real point of departure for the division of the Salem Pastures and of all other Common Lands in Massachusetts. The local authorities in Salem were evidently familiar enough with the text of this law, for it is frequently quoted in the town records, and the town clerk speaks of the original as in "Folio 23, Province Law Book." The Salem town records which cover this period of agrarian

[10] The histories of old towns like Haverhill and Newbury afford a striking commentary on that agrarian revolution by which the common people of Massachusetts declared their independence of lordly townsmen in the commune long before the English Colonies in America threw off the tyranny of a privileged class of rulers.

[11] Acts and Resolves of the Province of Massachusetts Bay, i, 65.

agitation have not yet been printed, but even a cursory examination of the manuscript volumes, now preserved in the office of the city clerk of Salem, will convince the student that the Land Question occupied *public* attention far more steadily than did the contemporary question of Witchcraft. For agrarian communities, the chief interests are always connected with the use of the soil, just as for fisher-folk the chief thought is always concerning the spoil of the sea. In reading the town records of Plymouth or of Salem, one cannot fail to perceive that the undercurrent of New England town-life, however broken the surface, is one steady and unceasing drift of hard common sense, driven on by the resistless pressure of cumulating majorities, and by the grinding force of public necessity.

The pressure upon the Old Commoners of Salem became so strong in 1702 that they voted, agreeably to the colonial law of ten years before, that all persons who had cottage right previous to 1661 should be classed among the "proprietors" of Common Lands. It was also voted, in the above year, for the benefit of the New Comers, or "For ye Incouragement & Growth of this Town: That all Free-holders of this Towne vizt: Every one yt hath a Dwelling house & Land of his own proper Estate in Fee Simple Shall have & is hereby Admitted unto ye priviledge of Commonage." At the same time it was carefully provided that nothing should be done in reference to the division, stinting, fencing, or disposal of the Commons, unless the matter be brought before town meeting "in an orderly way by ye Selectmen of ye Town, and there Debated & Voted, as hath been usuall." It is important to state that the Old Commoners in Salem seem to have always constituted the sovereign element in town meeting and to have controlled the machinery of local government.

The *Novi Homines* and the *Plebs* never really obtained the upper hand in this aristocratic old village republic. All agrarian reforms in Salem were brought about by concession on the part of the patrician element, and not through popular revolution. The town fathers, or the heirs of Old Comers, slowly yielded to the wishes of the New Comers, and thus the agrarian commune was gradually widened without losing its aristocratic and sovereign character; for newly admitted members immediately became as conservative of communal rights as had been their more favored predecessors.

In 1713, a meeting of Commoners was called under warrant from a justice of the peace, issued in due form to one of the Proprietors. This meeting, after it had been duly organized, encountered from some quarter an obtrusive line of policy. Complaint was made because the meeting was held in too small a place and without sufficient warning. After much debate, it was agreed to make present proceedings null and void and to summon a new meeting. A fresh warrant was issued by a different justice and the people gathered together in the chief meeting house of Salem. A moderator and a clerk were appointed as in ordinary town meetings (of which agrarian meetings were probably the prototype), and a committee of nine was chosen to receive claims to the Common Lands of Salem. This committee was instructed to receive such claims as were authorized by the town vote of 1702 and by the Province law of 1660. The committee had also to consider what should be done for those who paid heavy taxes (that is, for the patrician element) and what for those who had no claims at all.

The committee posted a public notice upon the door of the Meeting House, warning inhabitants to bring in their claims to shares in the Common Lands. According to

previous instructions, the committee proceeded to record applications in two distinct columns, one for cottages erected before the year 1661, and the other for all freeholders privileged by the town vote of 1702. Any one studying these parallel lists will notice that many freeholders represent also certain cottage rights established upon their own farms (as upon Old English manors), and also upon the Town waste, and even upon the Village Green. For example, Colonel John Hathorne, a well-to-do man (whose name represents the famous Hawthorne family) claims a house or freehold in the village, also a house upon his farm, and two cottage rights there. Mr. Gedney's name stands for three freeholds and for six cottage rights, four of them being in his great pasture and one upon Antrum's farm. John Pickering (the ancestor of Washington's Secretary of War) represents three freeholds and six cottage rights, one of the latter being at Glass House Fields, and another in South Field Point. Some of the cottage rights were in North Fields and some in South Fields. One cottage right was in the "Horse Pasture;" another on "the Towne Common."[12] One man, who is spoken of rather disrespectfully as "Old Nichols," had a cottage near the Pound, in North Fields. The cottage rights are usually specified by the name of some owner, past or present; and, in some instances, a considerable number of rights appear to have been massed in

[12] In early times, the present Town Common (Washington Square) of Salem appears to have been a kind of Town Waste. People were sometimes allowed to build shanties upon it, possibly for the purpose of serving refreshments on Training Days. Portions of the Common were leased for public purposes down to the year 1779 (Felt, ii, 197) and possibly until a much later period, for the custom continues to this day in many old communities, where the Selectmen are empowered to lease Town Land. At one time, there were public buildings upon the Common, *e. g.*, a school-house, a fire-engine-house, an alms-house, a cannon-house, etc. Churches were sometimes built upon the Town Common in the older villages of New England.

one man's hands, indicating possibly that cottage rights, after they were recognized as valuable, were bought up by rich men, as were Revolutionary and Pension Claims in after times.

In 1713, the same year in which the town of Salem first recognized the claims of her Cottagers and all Freeholders to share in the division of her common and undivided lands, was passed that vote which secured forever for public use the old Town Common or Training Field, the beautiful Washington Square of to-day. The origin of this Common is coëval with the origin of the town, for this tract was part of the oldest Town Land. The first distinct reservation of Salem Town Common was in 1685, when it was appointed by the town as a place where people might shoot at a mark.[13] In the year 1713, it was voted, "That the common lands where trainings are generally kept, before Nathaniel Higginson's house, be and remain as it now lays to continue forever as a Training Field for the use of the said town of Salem."[14] Originally Salem Common was a marshy tract, full of sedge and brush. "We have seen the men who have cut the flags and hoops on the Common and had rights to it, till the final settlement between the Cottagers and Commoners in 1713,"[15] says an old resident, writing in 1819. The

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[13] Felt, Annals of Salem, ii, 495.

[14] MS. Town Records of Salem, vol. iii. The first volume of the Town Records of Salem, 1634–59, has been published by the Essex Institute, in a form and with a literal exactness that are worthy of wide imitation. The other volumes, which must also be published and utilized before early Salem History can appear to the world as something besides Salem Witchcraft, are preserved in the vault at the office of the City Clerk. The second volume covers the period from 1659 to 1680; the third, from 1680 to 1748; and the fourth from 1748 to 1775; etc. Little conception of the richness of these unpublished Town Records can be had from the brief use made of them by the writer of this monograph, or by other investigators with only special points of interest in view.

[15] Quoted from Essex Register, of August 4, 1819, by B. F. Browne, Hist. Coll. of Essex Inst., iv, 2.

surface of the now level Common was for a long time very uneven, with numerous hills and marshy hollows, and pools of standing water. The tract was levelled about the beginning of the present century, at an expense of twenty-five hundred dollars; and, in honor of this public improvement, the Selectmen, in 1802, ordered the Common to be called "Washington Square," but the old name of "The Common" is still retained in popular use, like the name of "Boston Common,"[16] and it is to be hoped that it will survive forever, as an open record of the original land community from which the modern city has evolved.

At the same time the Town Common was reserved, it was also voted that all highways, burying places, and other common lands lying between the Town Bridge and the Block House, should remain common forever for the use of the town. Thus were secured to Salem those necessary communal foundations for the living and the dead, for the present and the future. The reservation of land for cemeteries, for streets and sidewalks, and for all public open spaces, is not ordinarily thought of as a survival of the principle of agrarian community in the midst of individual landed property which now seems to prevail almost everywhere, but this survival is none the less real because it is common and unnoticed.

Before proceeding to a division of the Common Lands, the Proprietors made still further reservations for the benefit of the community. From that magnificent town patrimony of four thousand acres of Commons, sixty acres were now granted for the use of the poor "and such others as are Livers in the Town but not Privileged to a Right

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[16] An attempt was once made to change the name of "Boston Common" into "Washington Park."

in the Common Lands." These were they who had no claims. It is interesting to observe how this reservation for the poor was administered. The sixty acres were appointed for a cow pasture, three acres to a cow right; and the Selectmen were from year to year to nominate such poor people as deserved the right of commonage. Thus, it should be observed, there was no premium placed on poverty, for only "such as have a cow of their own to keep" could secure the right of common pasture. A cottager who owned only a goat or a pig was ruled out from town bounty, for he could not be classed with his betters who owned a cow. An end, however, was made to all possible jealousy of Salem's aristocratic poor, when, in 1834, the town sold the pasture for six hundred dollars, and thus re-asserted its right of communal domain. But, by this time, the town was providing for its poor in a more excellent way. The Town Farm had now taken the place of the old Town Pasture, and Winter Island was reserved for the benefit of poor fishermen, who could there find a place to dry their fish. But a rent of five shillings per annum had to be paid to the town for the use of Winter Island,[17] thus indicating that the title to this tract, like the right to the reservation for the poor, was still vested in the town.

Besides the reservations for the poor, for the Town Common, and for other public purposes, small lots were assigned for the benefit of the clergy of Salem. In Old England, and in Southern Colonies like Maryland and Vir-

[17] During the late civil war, Winter Island was given over to the United States Government, for the purpose of harbor-defence, but since the return of peace Congress has granted the use of the Island to Plummer Farm School, so that the old locality is still a kind of public agrarian interest. The Neck lands, once a kind of Home Pasture for "Riding Horses," Milch Cows, etc., have now been converted into a pleasure-ground called "The Willows," where cook-shops, booths, and merry-go-rounds preserve for "the dear old Neck" its primitive character of a Home Pasture, or out-door nursery, for Salem children.

ginia, such reservations would have been called Glebe Lands. Ten acres were granted to the ministry of the First Parish of Salem; but for the clergy of the Second Parish five acres were considered enough. Five acres were also allotted to the pastor of the Village Precinct, afterwards known as Danvers, and five to the Middle Precinct, later called South Danvers, now Peabody. "The East Parish lot," says Felt, "was sold in 1832 for $146. That of the First Parish was disposed of in 1819 for $565. This sum was added to the fund for supporting their ministry, except enough of its income to purchase twenty bushels of potatoes annually for the clergyman then their pastor, which had been the amount of the rent."[18]

Including these Glebe Lands and four hundred acres which were reserved to satisfy incidental claims, for example those of the town of Lynn in the boundary disputes then pending, there were altogether at the disposal of the Proprietors something over four thousand acres, not reckoning abatements made on account of the quality of the land. Upon adding up the claims, there were found to be 1,132 rights to commonage. Of these, 138 rights or the equivalent of 460 acres, belonged to the inhabitants of Salem Village and "Ryall's Side," or the North Precinct; 204 rights or 680 acres belonged to the dwellers in the Middle Precinct; and 790 rights, or 2,630 acres, to the Proprietors of the body of the town, or of the two lower parishes of Salem proper.

In the year 1722–3, the Commons of Salem were divided between the claimants, according as they happened to be grouped in the above named local precincts. To Salem Village and Ryall's Side[19] was granted all the Com-

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[18] Felt, Annals of Salem, i, 190.

[19] The Records of the Proprietors of Salem Village and Ryall's Side from 1729–99 are still in existence.

mon Land beyond Ipswich River. The Middle Precinct received the Commons lying in that neighborhood. The body of the town of Salem retained the Common Lands lying on the south side of a line drawn from the northeast end of Spring Pond, beginning at a run of water there, thence easterly to so-called Tylly's Corner, then back of the Glass House Fields and down the plains to the house formerly owned by Humphrey Case, and so on to Norton's house and the Town Bridge, which entire circuit embraced the greater part of the Commons, or over 2,500 acres, besides the so-called "Flint's Pasture."

After this grand division of communal property, a new board of Commoners was instituted for each precinct, and the same old system of corporate administration of common property went on unchecked, and with the old spirit of aristocratic exclusiveness, as regards all New Comers. The above division not only gave greater strength to all freeholders and cottagers in the community, but it furnished an economic basis for two new towns, besides various parishes. The old system of agrarian community has died out in the younger towns which branched off from Salem, but in the mother-town it has been perpetuated down to the present day.

The history of the gradual curtailment of the Great Pastures of Salem, from their original extent of 2,500 acres, at the time of the above distribution, to their present comparatively narrow limits of 300 acres, does not fall within the scope of this monograph, which is less concerned with purely topographical details than with the origin and continuity in Salem of an archaic system of which the Great Pastures are a curious survival. Every year since the above division, the Proprietors of the Great Pastures have met, elected a moderator, listened to the report of the clerk, and have passed their customary

orders concerning the "stinting" of pasturage. The common domain, like the board of Commoners, has been gradually shrinking up, as did the Roman Senate and the dominions of Rome. The heirs of the original Proprietors, the *decuriones* of Salem, have been gradually dying off or selling out their rights to others. Farm after farm has been set off by vote of the Commoners to those who desired individual possession of their rights. Piece by piece the old Commons have been parcelled out into individual holdings; but still, down to the very present, a remnant of the once Great Pastures has been preserved. The actual quantity of land is of little significance compared with the fact that for nearly three centuries this old system of commonage has remained practically the same in the town of Salem. The writer has examined, at the house of Dr. Henry Wheatland, the present Commoner's clerk, the original records, which are remarkably complete, and he finds that a vote recorded in the last quarter of the nineteenth century differs very slightly in substance from votes passed throughout the seventeenth century. The charm of novelty should not be expected in a system which has its chief interest in the fact of endurance without a change for more than a thousand years in Old England before the English thought of conquering for themselves a New England.

And here, in passing, let us notice one illustration of the survival of archaic custom in the method of conveying land in early Salem "by turffe and twigg," which is mentioned by Palgrave as a Saxon form, to which later deeds and records were only collateral. This singular custom, not unknown among ruder peoples than the Saxons, was kept up in the rural parishes of old England and was thence directly transmitted by the Puritan Fathers to

these New England shores, where it long survived in the towns of Essex county, which after all was but a colony of modern East Saxons, with a North-folk and a South-folk, for county neighbors, though without a Wessex. What links in history are these old county names and local customs! What an iron grip upon early English precedent was that in 1695 when John Rusk of Salem, in the presence of two witnesses, took a twig from a growing tree and a piece of green turf, both upon his own land, and said, "Here, son Thomas, I do, before these two men, give you possession of this land by turffe and twigg!"

The right of alienating shares in the Great Pastures by deed was very early provided for by the old commoners of Salem. In 1732 a committee of nine men was appointed to measure, lay out, and convey lots from the common domain. Lots large enough for building purposes were thus frequently sold off by vote of the majority of commoners, who divided the proceeds. Individual rights were conveyed by deed, signed by the Committee in the name of the Proprietary. There are several such deeds in the town records, *e. g.*, vol. iii, under the dates, December 25, 1732; June 26, 1733; September 19, 1738. The above committee also compounded with persons who had encroached upon the Commons; for example, a man who had built a shop upon common land was allowed to remain by paying thirty-five shillings per rod for the ground occupied.

From the open air meetings of Saxon townsmen deliberating as to when and how they should plant, harvest and pasture their Common Fields, it is but a single step in history to the Court Leet, or popular assembly of tenants, upon the manorial estate of an English lord, or of a Maryland proprietor. It is but another step in his-

tory from these popular assemblies to the modern lawn meeting in Sir Walter's Park, whither flocked

> "His tenants, wife and child, and half
> The neighboring borough with the Institute
> Of which he was the patron"—*Tennyson's "Princess."*

From the Field Meetings of English Institutes, the transition is easy to a Field Meeting[20] of the Essex Institute. Here, as the English poet sings, all the sloping pasture seems to murmur, sown with happy faces and with holiday, and here, too, as in Sir Walter's Park, sport goes hand in hand with science.

ADDENDUM.

The following communication, made to the Salem Gazette, August 16, 1881, by Mr. H. F. Waters, a well known antiquary of Salem, is valuable for its items of historical interest and for its exact transcription of votes from the original Town Records:

Messrs. Editors: In connection with the paper of Mr. Adams, at the Institute meeting, the following "votes" from our old town records may not be uninteresting. Additional information is given in the Report, prepared some years ago by Judge Endicott, then City Solicitor, upon the Neck lands. The "Blockhouse" stood about on the site of the late pound at the head of the Neck, and the land shore was known as the "Blockhouse Field" into this

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[20] So-called "Field Meetings" for the regulation of Common Lands, used to be held in Connecticut, see Lambert, New Haven, 96–7, and of necessity must have existed in the "Perambulation" and "Division" of Salem Commons, to say nothing of the associate planting and harvesting of Common Fields. But the Field Meetings of the Essex Institute are not the direct continuation of the earlier Salem institution, although they are, perhaps, the outgrowth of the same original idea; for the Field Meetings of English scientific societies, which suggested the Field Meetings of the Essex Institute (see Bulletin of the latter, i, 89), are themselves the cultivated product of the old English instinct for open air assemblies. The name Field Meeting, actually surviving in its original sense in this country, if not also in England, is sufficient proof of this view.

century. It belonged to the heirs of Benjamin Ives, who sold it to their kinsman Richard Derby.

As to the acres "sett a Part" for the use of the ministry . . . for pasturage, this privilege seems to have been commuted later for a money payment, as Dr. Bentley records being waited upon by a farmer from Danvers, who brought him rent for the use of the "Minister's Field," much to the good divine's surprise, as he had previously known of no such perquisite.

"Att a Meeting of the Proprietors of the Lands lying in Comon In the Town of Salem, held at the Meeting-house in the first Parrish In Salem November the Twenty-Second Day one Thousand Seaven Hundred and Fouerteen being Legally warned

Voated That Coll'o Samuell Browne Esq'r is Chosen Moderator for the Meeting.

Voated That the Returne of the Committe who were Appointed to Receive the Claims to the Comon Lands In Salem as Itt is entred on the other Leafe Backward is Received allowed and approved.

Voated That whereas there are Severall Claims nott yett ffully made out to thee Committee, and others who have Neglected to bring in their Claimes: Therefor for Compleating the same That the Proprietors doe grant further Liberty to the Committee for fouer or five months next Comeing to Receive & Enter all such further Rights and Claimes as any person may have to make that none may be excluded that have Right and that Notifications be by them Accordingly Posted up in the most Publick Places in the three several Parrishes of the time and place of the Committee's Meetings.

Voated That there be sixty Acres Granted for the use of the Poor of this Town and such others as are Livers in the Town but not Privileged to A Right in the Comon Lands and the same to be for a Cow Pasture: To be allowed Three Acres to A Cow the selectmen from year to year to Propose and allow the persons so to be Priviledged and they are to be such as have a cow of their own to keep.

Voated That Winter Island be wholly Reserved and Granted for the Use of the Fishery, and such shoremen as Dry fish there who live in the Town that pay an acknowledgment or Rent of five shillings per annum for a Room to dry ffish for a ffishing vessell and such as live in other Towns who come and dry ffish there shall pay an acknowledgment or Rent of Twenty Shillings per annum for a fish room for each vessell: To be lett by the Selectmen of the Town of Salem yearly and

the rents to be pd into the Town Treasurer for the use of the Town: the Hirers to fence in the same att their own charge.

Voated That the Neck of Land to the Eastward Part of the Blockhouses be Granted and Reserved for the use of the Town of Salem for a Pasture for Milch Cows and Rideing Horses, to be fenced at the Townes charge and lett out yearly to the Inhabitants of the Town by the Selectmen, and no one Person be admitted to put into said Pasture in a sumer more than one milch Cow or one Rideing Horse, and the whole number not to exceed Two Acres and a half to a Cow and fouer Acres to a Hors, the Rent to be paid into the Town Treasurer for the Time being for the use of thee Town of Salem.

Voated That there be Tenn acres of the Comon Lands sett a Part and Reserved for the use of the Ministry in the body of the Town for Pasturage, and five Acres more for the Village Precinct Ministry and five acres more for the Middle Precinct Ministry in suiteable and convenient places for them.

Voated That there be about Fouer Hundred Acres on the moste remote part of the Town towards or on the west end of Dogg Pond Rocks and Hills adjoining to Linn Line where there may be Last Damage to the known Proprietors to be Reserved for any such as may come and make out any Right or Claime after the first day of June next ensuing.

Voated That all Dwelling Houses built in thee Town of Salem since the year one Thousand Seaven Hundred and Two to this day being the 22d day of November 1714 Bee and hereby are admitted to and allowed a Right in the Comon Lands in Salem.

Voated That all the Comon Lands in Salem not otherwise disposed off bee measured by an Artist and Returned to the Committee who are desired to gett the same done.

Voated That the said Comon Lands be ffenced, and stinted or divided to and amongst the Proprietors of said Comon Lands in Proportion to their Rights and According to Quality as neer as may bee that have or shall make out their Rights before the first day of June Next ensuing as hereafter may be agreed on by the major part of the Propriety.

Voated That the Committee who were Chozen to Receive the Claimes to the Comon Lands or the major part of them are ordered and Impowered to Sell and dispose of some small Pieces and Stripe of the Comon Lands in this Town of Salem as may be suffitient to defray the Necessary Expences of the Committees and the charge of measuring the saide Comon Lands."

XI

THE GENESIS OF A NEW ENGLAND STATE

(CONNECTICUT)

"There was only one thing dearer to him [the New Englander] than his township —his hearth. The 'town' was as ancient as the neighborhood, and older than the county; his great-grandson knows that it is much older than the State, or the Union of the States."—*E. G. Scott.*

"In this part of the Union [New England] the impulsion of political activity was given in the townships; and it may almost be said that each of them originally formed an independent nation. It is important to remember that they have not been invested with privileges, but that they seem, on the contrary, to have surrendered a portion of their independence to the State."—*De Tocqueville, (Reeves' Trans.).*

"Each New England State may be described as a confederacy of minor republics called towns."—*Palfrey.*

"The inhabited part of Massachusetts was recognized as divided into little territories, each of which, for its internal purposes, constituted a separate integral government, free from supervision."—*Bancroft.*

O matre pulchra filia pulchrior!

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History is past Politics and Politics present History.—*Freeman*

XI

THE GENESIS OF A NEW ENGLAND STATE

(CONNECTICUT)

Read before the Historical and Political Science Association, April 13, 1883

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THE

GENESIS OF A NEW ENGLAND STATE

(CONNECTICUT)

In the new interest which has sprung up of late years in the institutional history of the United States, it is a little strange that the territorial forms and features, the bodies, of the States themselves are usually left so far out of account. It may be that this neglect has come from their comparative constancy of outline. It is easy to trace most of the internal workings of the State to the town system or its equivalents, and to accept them as a purely natural outgrowth. But it is just as easy to see that the external outline of New York, Illinois, or Texas has, from a very early period, been much the same as at present, and to accept it as artificial, as imposed on the State spirit by some superior power.

And it must be confessed that this distinction holds good as a general rule. Each of our States has had, throughout its history, a remarkable uniformity of feature. There is comparatively little of that breaking up and reuniting, that shooting out of a crystal here, or disappearance of a limb there, which gives the idea of natural growth in a French kingdom, while it makes it difficult to say just where the growth took permanent shape. Our States, we might almost say, came into the world full grown, like Minerva. Even the Massachusetts towns, the accepted exemplars of their class, found their Commonwealth boundaries waiting for them when they came into existence, and conformed to them. In the original States there is usually a certain sequence of events:

a grant of territory by the King to a great mercantile company or court favorite; a subsidiary, or an entirely new, grant to actual colonizers; and the location of the colony with fairly, if clumsily, defined boundaries, which have continued substantially the same down to our own day. In the States subsequently formed there is a quite parallel sequence of events: the acquisition of jurisdiction by the nation; the establishment of territorial boundaries by Congress; and the erection of a State within the external limitations already imposed. Of course, the general idea will not bear minute examination: all the States have had their variations of outline, some of them pregnant with significance; and the historical geography of the United States is a field where some worker will yet find a rich and virgin soil. Nevertheless it remains true that the individuality of the future State is sufficiently constant from its first connection with human interest, history and government to give good reason for considering it in the beginning as a human creation rather than a natural growth.

We look, then, as a general rule, to the will of the governing power of a colony for the body, the territorial form, of a township, while we look to the Germanic heredity of the people for its spirit; we look to the town spirit for the spirit of the future State, and to the will of a King or of a Congress for its body, its territorial form and boundaries. It is the purpose of this article to direct attention to one of the few exceptions to this general rule, the present State of Connecticut,* a State which was born, not made, which grew by natural accretion of townships, which formed its own government, made its own laws, engaged in its own alliances, fought

* Rhode Island and Vermont are the other exceptions, and as well deserve examination. We can hardly include Plymouth among the exceptions, for that colony only claimed individuality by charter purchase; nor Texas, whose admission to the Union was a flagrant violation of every precedent of State origin.

its own wars, and built up its own body, without the will of King, Kaiser, or Congress, and which, even at the last, only made use of the royal authority to complete the symmetry of the boundaries it had fairly won for itself.*

Territorial Claims.

The accepted story of the transmission of the title to the jurisdiction of Connecticut is very simple. The soil was a part of James I.'s grant to the Council of Plymouth; a part of the smaller grant to the Earl of Warwick in 1630 by the Council of Plymouth; a part of the still smaller grant to Viscount Say and Sele, Lord Brooke, and others in 1631 by Warwick; and the territory, as it now stands, was confirmed to the colony of Connecticut by Charles II.'s charter of 1662, with the consent of the survivors of the last named grantees. Minor difficulties, such as Fenwick's troublesome claim under the Say grant, were bought off by the colony; the Indian possessory title was extinguished by purchase and conquest, and the colony's chain of title to its own territory seemed to be without a weak link. In that case, there would have been nothing out of the ordinary in the Connecticut colony, and

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*Authorities in General: Trumbull's *Colonial Records of Connecticut;* Hoadley's *Colonial Records of New Haven;* Bowen's *Boundary Disputes of Connecticut;* Trumbull's *History of Connecticut;* Hollister's *History of Connecticut;* Dwight's *History of Connecticut;* Peters' *General History of Connecticut* (McCormick's reprint of 1877); Atwater's *Colonial History of New Haven;* Bacon's *Ecclesiastical History of Connecticut;* Fowler's *Local Law in Massachusetts and Connecticut;* Savage's *Winthrop's New England;* Brodhead's *History of New York;* O'Callaghan's *History of New Netherland;* Thompson's *History of Long Island;* Wood's *First Towns of Long Island;* Holland's *History of Western Massachusetts;* Hartley's *Hartford in the Olden Time;* Stiles's *History of Ancient Windsor;* Hall's *History of Norwalk;* Huntington's *History of Stamford;* Caulkins's *History of New London;* Mead's *History of Greenwich;* Howell's *Early History of Southampton, L. I.;* Bond's *History of Watertown, Mass.* References are made to the author's name, except in the case of records.

the formation of its territorial body would have followed the general rule.

But there was a weak link, or rather a non-existent link, the grant to Warwick: he who looks for it will look in vain. Trumbull and Dwight* assume that the Say and Sele grant was really from the Council of Plymouth, of which Warwick was the President; but the Say and Sele grant† is, by its terms, from Warwick personally, and the Council of Plymouth is not even named in it. Hollister‡ takes a much more tenable ground: he admits that no trace can be found of a grant to Warwick, but assumes that such a grant must have been made, since Warwick would not otherwise have ventured to make the Say and Sele grant. Peters§ scouts the notion of a grant to Warwick, and taunts the colonial government with its inability to show any original title. Bancroft|| and other general authorities state the grant to Warwick without noting any doubt as to its validity, and it is generally accepted without question as the basis of Connecticut's territorial claims, subsequently confirmed by the charter.

On the other hand, not only is it evident that the original settlement of Connecticut was legally a sheer intrusion, in absolute disregard of the paper title on which it afterwards professed to rely, but the Plymouth Council itself did not recognize the Warwick grant, or the claims of the Say and Sele associates under it. On the contrary, when it divided

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* 1 *Trumbull*, 27: *Dwight*, cap. 1.

† It is given in 1 *Trumbull*, 495.

‡ 1 *Hollister*, 20.

§ *Peters*, 27. "The Governor and Company of Connecticut gave a formal answer, setting up a title under the Earl of Warwick, who, they said, disposed of the land to Lord Say and Sele and Lord Brooke, and the Lords Say and Brooke sold the same to Fenwick, Peters, and others. The Earl of Arran answered that, when they produced a grant from the Plymouth Company of those lands to the Earl of Warwick, it should have an answer. But the colony was silent."

|| 1 Bancroft's *United States*, 395.

the remaining property in the soil among its members in 1635, before surrendering the jurisdiction to the King, it granted the territory between the Narragansett and Connecticut rivers to the royalist Marquis of Hamilton, and recorded the grant. This was the only Connecticut grant, up to the charter, which came from a source having an ostensible power to grant, and it became obsolete by non-user, since the royalist patentee was unable to make any attempt to colonize under it until colonization was completed without his assistance.* On the other side of Long Island Sound lay the fine territory of Long Island. This was covered by a royal grant to the Earl of Stirling in 1635; but the grantee made no attempt to assert any rights of jurisdiction, and his grantees had at first as open opportunity as the settlers on the mainland to erect independent town republics.†

The nearest approach to the truth seems to be that an informal, and consequently invalid, grant of some kind was made to Warwick, and that the original colonists, in their subsequent search for a paper title, took this as the best one available to them, though they had never respected it in practice. They were in no position to feel or assert any pride in that which makes their colonization noteworthy, the absence of an original patent. They would have asserted the Hamilton patent with equal warmth, if it had offered superior advantages; they chose the Warwick title because Say in 1662, while he was a republican, was yet a man of influence with the King, because he was a friend to New Englanders and disposed to assist any New England colony, and because he, the only surviving patentee, was too rich to care for quit rents, and too old to be a dangerous ally. The truth is, that

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* The Hamilton heirs, in 1683 and subsequent years, sued for a recovery of their alleged rights in the soil, but their suit was denied for the reason that it would be unjust to disturb long settled titles, and to give the heirs the benefit of the colonists' improvements. See 1 *Trumbull*, 360.

† *Thompson*, 117; 1 *O'Callaghan*, 210, 215; *Wood*, 6, 20.

the colonization and organization of Connecticut took place without the remotest connection with any paper title whatever, and that the Warwick title was purely an after-thought to bolster up, by the forms of English law, the really better title of the colonists, acquired by their own purchases, conquests, and colonization. For the purposes of this article the Warwick and Say titles may be dismissed as practically both non-existent.

In 1634, then, the territory now occupied by Connecticut was a veritable No-Man's-Land. It had been granted, indeed, to the Plymouth Council, but the grant stood much on a par with a presentation of a bear skin whose natural owner was still at large in the forest. On the north, the Massachusetts boundary line had been defined by charter, though its exact location, in its whole length, was still in the air; on the east, the Plymouth purchase boundary was in the same condition; on the west, the asserted Dutch boundary of New Netherlands was in the same condition. The debatable ground between these unsettled boundaries offered one of the few opportunities which the town system has had, to show how it can build up the body, as well as provide the spirit, for a State. A brief sketch of the manner in which the work was done will show that the towns, the natural outgrowth of the colonists' natures, formed their own colonial governments, pushed back the asserted boundaries of their neighbors, and obtained for themselves a local habitation and a name among commonwealths long before the King added the sanction of his royal assent to a work which had already been accomplished without it.

Colonization.

Movement toward the vacant territory fairly began in 1633. In that year the Dutch established a trading house where Hartford now stands; William Holmes, a Plymouth skipper, sailed up the Connecticut river, passed the Dutch station, and established a trading house where Windsor now stands; and

a few Massachusetts traders and explorers had made their way through the wilderness to the same point. In the following year the first real settlements took place. In 1630 and 1632 the towns and congregations of Dorchester, Watertown, and Newtown, in Massachusetts, had been founded, each by a distinct body of immigrants from England.* For various reasons they became dissatisfied with their location, and desired a removal further west. After a year's persistent application they wrung from the General Court a reluctant consent, conditioned on their remaining within the jurisdiction of Massachusetts.† In 1634, before the consent was given, a few persons from Watertown settled at Wethersfield. In 1635 the main Watertown body followed to Wethersfield, and the Dorchester body to Windsor; and in 1636 the main Newtown body removed to Hartford. At the end of the year 1636, these three townships, the nucleus of the Connecticut colony, contained about 160 families and 800 persons. In the following year they contained a sufficient number of fighting men to declare war against the Pequots, and almost annihilated that tribe.‡

In 1635, the Say and Sele associates built a fort at the mouth of the Connecticut river. In 1639, Colonel George Fenwick, the only one of the associates who showed any disposition to urge the claim, brought colonists to Saybrook, or Seabrook, as the fort was often called, and it kept up an independent existence for some years. Fenwick was treated by the Connecticut colonists with the deference due to a possibly formidable rival. In 1644 various reasons recalled him to England, and he sold Saybrook to the Connecticut colony. The equivalent was to be certain tolls upon vessels passing the fort, and they netted Fenwick about £1,600. In return he transferred the fort and promised, "if it came into his

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* 1 Mather's *Magnalia*, 75.

† 1 Savage's *Winthrop*, 167.

‡ See the Connecticut authorities.

power," to transfer all the land from Saybrook to the Narragansett river. This agreement was never executed, but it quieted the only one of the Say and Sele associates who had shown any disposition to interfere with the pushing and ambitious Connecticut colony. Saybrook now became a Connecticut town.*

In 1637 the wealthiest body of immigrants that had yet come from England arrived at Boston.† They resisted all inducements to settle in Massachusetts, and in 1638 founded a colony of their own at what is now New Haven. Their title rested entirely on purchase from the Indians, as did all their subsequent extensions. When their stronger neighbor, the Connecticut colony, by its Fenwick purchase, acquired a *pseudo* title under the Say and Sele grant, the New Haven colony at first showed signs of a disposition to assert the Stirling grant as perhaps giving it some kind of a paper title beyond its mere purchases on Long Island ;‡ but it soon settled back, for its right to existence, upon its Indian purchases and its recognition as a member of the New England Union in 1643.§

There were thus, in 1638, three independent colonies within the present limits of Connecticut. One of them, the Saybrook colony, rested on a paper title, which rested on nothing and was never perfected. The other two, the survivors after 1644, had not even a baseless paper title to rest upon. Both were as perfect examples of "squatter sovereignty" as Douglas could have asked for. Without a shadow of reliance upon authority, they formed their own governments, *proprio vigore*, made war, peace and alliances, levied taxes, and collected customs. In 1643 they united with

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* *Dwight*, cap. 12. The agreement is in 1 *Conn. Rec.*, 266.

† *Atwater*, 80.

‡ 2 *New Haven Rec.*, 300. "Our title to those lands from the Lord Starling."

§ See New Haven authorities.

Plymouth and Massachusetts Bay in the New England Union. In 1650 they joined in the treaty at Hartford with Governor Stuyvesant, which put the boundary between New York and Connecticut* very much as at present, except that it was a straight line throughout, and continued across Long Island from Oyster Bay to the Ocean. Before the charter was granted, Massachusetts† had agreed to a boundary line not very far from that which was ultimately settled; and as Massachusetts claimed the territory on the east, the modern State of Rhode Island, the limits of the commonwealths were fairly settled. Let us see how their towns developed them, and how they treated their towns.

The Connecticut Colony.

It must be noted that these Newtown, Watertown, and Dorchester migrations had not been altogether a simple transfer of individual settlers from one colony to another. In each of these migrations a part of the people was left behind, so that the Massachusetts towns did not cease to exist. And yet each of them brought its Massachusetts magistrates, its ministers (except Watertown), and all the political and ecclesiastical machinery of the town;‡ and at least one of them (Dorchester) had hardly changed its structure since its members first organized in 1630 at Dorchester in England. The first settlement of Connecticut was thus the migration of three distinct and individual town organizations out of the jurisdiction of Massachusetts and into absolute freedom. It was the Massachusetts town system set loose in the wilderness.

At first the three towns retained even their Massachusetts names; and it was not until the eighth court meeting, Feb-

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* 1 *Brodhead*, 519.

† *Bowen*, 17, (map).

‡ 1 *Bond*, 980; *Hartley*, 49; *Stiles*, 25 (note).

ruary 21, 1636(7),* that it was decided that "the plantac̃on nowe called Newtowne shalbe called & named by the name of Harteforde Towne, likewise the plantac̃on now called Watertowne shalbe called & named Wythersfeild," and "the plantac̃on called Dorchester shalbe called Windsor." On the same day the boundaries between the three towns were "agreed" upon, and thus the germ of the future State was the agreement and union of the three towns. Accordingly, the subsequent court meeting at Hartford, May 1, 1637,† for the first time took the name of the "Genrall Corte," and was composed, in addition to the town magistrates who had previously held it, of "comittees" of three from each town. So simply and naturally did the migrated town system evolve, in this binal assembly, the seminal principle of the Senate and House of Representatives of the future State of Connecticut. The Assembly further showed its consciousness of separate existence by declaring "an offensive warr ag^{t} the Pequoitt," assigning the proportions of its miniature army and supplies to each town, and appointing a commander. In June it even ordered a settlement to "sett downe in the Pequoitt Countrey‡ & River in place convenient to maynteine o^{r} right y^{t} God by Conquest hath given to us." So complete are the features of State-hood, that we may fairly assign May 1, 1637, as the proper birthday of Connecticut. No King, no Congress presided over the birth: its seed was in the towns.

January 14, 1638(9), the little Commonwealth formed the first American Constitution,§ at Hartford. So far as its pro-

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* 1 *Conn. Rec.*, 7.

† 1 *Conn. Rec.*, 9.

‡ The Pequot Country was, in general terms, the south-eastern part of the State, east of the Connecticut river. Massachusetts claimed a share in the rights of conquest, but Connecticut never relaxed her hold upon it, and the charter gave her a formal approval of her claim.—*Bowen*, 26 (map).

§ 1 *Conn. Rec.*, 20.

visions are concerned, the King, the Parliament, the Plymouth Council, the Warwick grant, the Say and Sele grant, might as well have been non-existent: not one of them is mentioned. It is made, according to the preamble, on the authority of the *people* dwelling on "the River of Connectecotte and the Lands thereunto adioyneing;" its objects are to establish "an orderly and decent Gouerment," which should "order and dispose of the affayres of the people," and to maintain "the liberty and purity of the gospell" and "the disciplyne of the churches;" and for these purposes its authors "doe therefore assotiate and conjoyne our selues to be as one Publike State or Cōmonwealth." The only sovereignty recognized in the constitution or the oaths of office prescribed by it, is that of the people. It cannot, therefore, be said that the government of Connecticut was *formed* by the three towns, though it undeniably grew out of them and was conditioned on every side by their precedent existence. Its establishment has some parallels to that of the Federal Constitution one hundred and fifty years afterward. In both cases the constituent units, towns and States, never independent in fact before or after, were nominally independent before but not after. In both cases, while the units remained the same as before, the constitution was not framed by General Court or by Congress, but by an unprecedented body, a popular convention in the one case, a Federal Convention in the other. In both cases the new political creation succeeded to a part of the powers which the constituent units had before exercised. Here the parallel ceases: there was no occasion for any ratification by the towns, since their inhabitants had united in framing the constitution itself.

There were to be two "General Assemblies or Courts" yearly, in April and September: the former for the election of a Governor and other magistrates for one year; the latter "for makeing of lawes." A General Court was to consist of a Governor, Magistrates, and Deputies. Each town was to

nominate two persons as Magistrates ;* and out of the whole number nominated the General Court was to choose by ballot not less than six for the next year, but might "ad so many more as they judge requisitt." The three towns were each to send four Deputies "to agitate the affayres of the Comon-wealth ;" new towns were to send Deputies according to their population. If the Governor and Magistrates at any time refused to summon a General Court upon petition of the freemen, the towns, through their constables, were to issue the summons, and in such case the Governor and Magistrates were to be excluded from the General Court. The election of local officers and the management of local affairs were left entirely to the towns, with an indefinite power of supervision in the General Court. "In w^{ch} said Generall Courts shall consist the supreme power of the Comonwealth, and they only shall haue power to make lawes or repeal thē, to graunt leuyes, to admitt of Freemen,† dispose of lands vndisposed of to seuerall Townes or p^{r}sons, and also shall haue power to call ether Courte or Magestrate or any other p^{r}son whatsoeuer into question for any misdemeanour, and may for just causes displace or deale otherwise according to the nature of the offence, and also may deale in any other matter that concerns the good of this comonwelth, excepte election of Magestrats, w^{ch} shall be done by the whole boddy of Freemen." This constitution was not only the earliest but the longest in continuance of American documents of the kind, unless we except the Rhode Island charter.‡ It was not essentially altered by the charter of 1662, which was practically a royal confirmation of it; and it was not until 1818 that the charter, that is, the con-

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* These officers, the germ of the future Senate, exercised judicial powers in their towns ; and, as the General Court grew stronger, it also appointed commissioners "with magestraticall powers" for the towns.

† In 1643 the General Court left the admission of freemen to a major vote of each town, retaining only a formal right of confirmation.

‡ Connecticut, 1639-1818 ; Rhode Island, 1663-1842.

stitution of 1639, was superseded by the present constitution. Connecticut was as absolutely a State in 1639 as in 1776.

In both the Connecticut and the New Haven colonies the General Courts not only made laws and pardoned offences against them, but exercised the judicial power on appeal from the Particular Courts, the magistrates of the towns. The records of both are cumbered with tedious civil and criminal suits, in which Connecticut provided for, and New Haven denied, trial by jury. But the essential difference between the two was, that Connecticut left to the towns a control over their civil and religious affairs which the more somber tone of New Haven denied. The early Connecticut town and its church were identical;* the officers and affairs of both were settled to the people's liking at one meeting; and the General Court interfered only to apportion taxes and decide differences. From the first appearance of a New Haven town, the General Court was always meddling. Connecticut gave the town system full and free play: New Haven aimed to be a centralized theocracy, responsible for the moral well-being of its dependent towns. The consequence was that Connecticut rapidly outstripped her rival in the race for the formation of new towns and the appropriation of the No-man's-land around them. Her early Indian wars gave her extensive rights of conquest, which her restless citizens were not slow to perfect by settlement. Even the unchecked religious dissensions in her churches hastened the process of town formation by scattering new settlements governed by Connecticut notions.† Thus, long before the grant of a charter, Connecticut had

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*In 1726, members of other sects than the Congregational having become numerous, the General Court allowed the formation of other churches. When this was done, the Congregational church took the legal name of "The Prime Ancient Society," and the town meetings were separated from it.

†A Wethersfield offshoot left the Connecticut colony, colonized Stamford, and very naturally became the most unmanageable of the New Haven towns.

hemmed her rival in by towns of her own, confined her to the territory around the original settlement, and left her no room for expansion.

Connecticut histories state that the towns were "incorporated" in 1639 by the General Court. The only incorporation was a series of general acts, passed October 10, 1639, the first after the adoption of the constitution; but these were only a formal legislative confirmation of recognized town privileges. They enacted* that "the Townes of Hartford, Windsore, and Wethersfield, or any other of the Townes within this jurisdiction," should have power to dispose of vacant lands, choose their own officers and courts, and control their local affairs; and they confirmed to the towns the probate jurisdiction and control over the records of real estate transfers which they still retain. They speak also of the towns' "lymitts bounded out by this court." In the case of neighboring towns, particularly where there were any differences of opinion, the court always exercised this power of settling town boundaries, beginning in the next year, 1640.† The boundaries of the new towns of Farmington and New London were laid out by the court in 1645 and 1649,‡ and this method of locating a new town was thereafter increasingly more frequent until 1662. After that year the General Court's authority in the matter became exclusive.

But, as a general rule, before the charter was received, the town boundaries were fixed by agreement of the inhabitants or by Indian purchase, and the tacit recognition of the General Court and its agents. The "incorporation" of a new town usually consisted in such fatherly advice as was given in 1650 to the persons intending to settle Norwalk: they are directed to make all preparations for self-defence, to divide

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*1 *Conn. Rec.*, 36.

†1 *Conn. Rec.*, 47.

‡1 *Conn. Rec.*, 133, 185. But in New London local government had already been begun by the people. *Caulkins*, 56.

up the land subject to the rectification of "aberrations" by the General Court, and to "attend a due payment of theire proportions in all publique charges."* The organization of a primitive Connecticut town was thus altogether popular, sometimes with, sometimes without, the General Court's express control.

As soon as the population of any defined purchase or grant became numerous enough to demand local government, a general meeting elected a constable and two or more townsmen, ordered the erection of a pound and (generally) of a minister's house, and took charge of allotments of land. As soon as the little town gained some consistence, the General Court's agents appeared with a demand for the town's "rate" or statement of persons and property, for purposes of taxation. For these purposes the constable was a Commonwealth's officer as well as a local officer, and through him and the magistrates or commissioners the town was attached to the Commonwealth.†

As soon as the rate showed a sufficient number of freemen, the town might send a Deputy to the General Court; but this troublesome privilege was at first unused. Until 1647 the twelve Deputies from the three original towns sufficed to make laws and lay taxes for all the towns.‡ Even when the number of Deputies begins to increase, the towns which they severally represent are not named. But the growth of the Connecticut town system may be seen by this steady increase in the number of Deputies after 1644, when Southampton, L. I., was admitted as a town. In May, 1647, the number of Deputies rose from 12 to 18; in May, 1649, to 20; in May, 1651, to 22; in May, 1654, to 24; in May, 1655, to 25; and in February, 1656(7), to 26. At first only the three

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* In 1651 the General Court formally voted that Mattabezeck (Middletown), and Norwalk should be towns, and choose constables.

† The process may be followed in detail in the local histories among the authorities.

‡ Once, in 1645, thirteen were present.

original towns appear in the "rates." In 1645, Stratford, Fairfield, Southampton, L. I., Saybrook, and Farmington appear in the rates. In 1653, Norwalk, Middletown, and New London close the list of formal additions to the rate list of towns, until the advent of the charter. The other smaller towns, whose independent existence is constantly recognized in the General Court proceedings, were rated as parts of these principal towns.

The natural expansiveness of the free Connecticut town system was exemplified on Long Island.* After 1662 the colony's claim to that island rested on the charter's grant of the "island's adjoining" its coast: before that date, its claim was exactly on a par with its claim to the mainland, the voluntary action of the towns. In 1635 the King had granted Long Island to the Earl of Stirling. He seemed to care nothing for its jurisdiction; and, as purchases were made, the settlers formed towns and applied for admission to Connecticut.† Southampton was admitted in 1644, Easthampton in 1649, Setauket in 1658, Huntington in 1660, and Southold and the other English towns in 1662, after the grant of the charter. In 1664 the Duke of York, having bought the Stirling patent, extended the jurisdiction of New York over Long Island, and Connecticut was unable to resist him.‡ In 1673, when the Dutch recaptured New York, the English towns on Long Island again took shelter with Connecticut; but in the following year the Duke was again put into possession of his province, and Connecticut finally lost Long Island.§

During its period of independent existence, the Connecticut commonwealth, as has been said, gave the town system full

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* Springfield, Mass., was also for a time claimed as a Connecticut town. 1 *Holland*, 30–33. More than a century afterward, Connecticut's claim to a part of Pennsylvania was only asserted by means of the continued vitality of her town system, and its extension to Wyoming.

† Southold entered the New Haven colony, by purchase.

‡ 1 *Brodhead*, 726.

§ *Wood*, 24–28.

and free play. The instances of interference with local government are very few. In October, 1656, the towns were forbidden to entertain "Quakers, Ranters, Adamites, or such like notorious heretiques," under penalty of £5 per week. In February, 1656(7), the General Court limited the right of suffrage by declaring that the phrase "admitted inhabitants" in the constitution meant only "householders that are one & twenty yeares of age, or have bore office, or have £30 estate."* This was reaffirmed in 1658. In March, 1657(8), it was ordered that no persons should "imbody themselves into church estate" without consent of the General Court and approbation of their neighbor churches. With these exceptions, Connecticut towns did very much as they pleased in civil and religious affairs, provided they paid their rates promptly.

New Haven Colony.

June 4, 1639, the planters at Quinnipiack (New Haven) met and framed a civil government which was at least closely bound up with the ecclesiastical government.† They agreed that the Scriptures should be the law of the town; that only church members should be burgesses and choose magistrates from their own number; that twelve burgesses should now be chosen by general vote; and that these should choose seven of their number to be the seven pillars of the church and the first General Court. In the following year the name of the town was changed to New Haven. The management of public affairs by the General Court was of the most austere character. Sumptuary laws and acts to regulate prices and wages were immediately passed; and the authority of the church was upheld by punishing criminally such as did "expressly crosse y^e^ rule" by venturing to "eate, drinke, &

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* 1 *Conn. Rec.*, 293.

† *New Haven Rec.*, 11. *Bacon*, 24, argues to the contrary; but see *Atwater*, 94.

to shew respect unto excommunjcate persons." This system did not at first provoke any resistance in the original offshoots* from New Haven, the towns of Milford, Guilford, and Branford, whose people were wholly at one with those of New Haven. But it was a constant source of heartburning in the more distant acquisitions of Stamford and Southold;† it checked any extension of the New Haven jurisdiction outside of these six towns; and in the final struggle between Connecticut and New Haven, it proved to be the latter's vulnerable point.

New Haven extension was altogether by purchase; and, when the union of the towns was consummated, the General Court controlled the town organizations much more minutely than Connecticut attempted to do. Constables and magistrates for the new towns were appointed at first by the General Court, and the right of confirmation at least was always insisted upon, even when the towns began to assert their own right of choice. Some symptoms of weakening were shown as internal dissensions grew warmer. In 1656 two constables were appointed for Stamford, but one of them was not to serve if the freemen of that town were not willing, "though the court be of another minde."‡ But, as a general rule, all the towns were to follow implicitly the civil and ecclesiastical methods of the parent town; even the officers of their "trayned bandes" were to be church members, approved by the magistrates whom the General Court had appointed or confirmed.

In this manner five dependent or co-ordinate towns were formed.§ The neighboring towns of Milford and Guilford, bought in 1639, were independent at first, but were admitted to the General Court in 1643. Stamford, bought in 1640,

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* *Fowler*, 68.

† *Huntington*, 73; *Atwater*, 387.

‡ 2 *New Haven Rec.*, 173.

§ Unsuccessful efforts were also made to colonize in Delaware Bay.

was admitted in 1641. Southold, L. I., bought in 1640, was admitted in 1649. Greenwich was also bought in 1640, but the Dutch seduced the purchasing agents into making it a Dutch town.* In 1650, by the treaty of Hartford, it was restored to New Haven and became a part of Stamford. The last of the towns, Branford, granted to a new colony in 1640, was also independent at first: it was admitted in 1651. In 1656 and 1659 Huntington, L. I., applied to be admitted, but was refused because it insisted on the right of trying all its civil cases, and all its criminal cases not capital.† All the New Haven towns were thus restricted to the same mould. One trivial exception was made in the case of Milford, which had made voters of six persons, not church members, before its admission. This was allowed to stand, after much negotiation, on condition that it should never be repeated, and that the six interlopers should never hold office.

October 27, 1643, the General Court, which was now composed of the Governor and the Magistrates and Deputies of New Haven, Stamford, Milford, and Guilford, adopted a series of "foundamentall orders" as a constitution.‡ All persons were to have the rights of "inheritance and commerce," but only church members were to be burgesses, vote, or hold office. The towns were to choose their own courts, but these were only to try civil cases under £20, or inflict punishment of "stocking and whipping," or a fine of £50. All higher cases, and appeals in the lower cases, were reserved to the General Court. The free burgesses were to choose the Governor and other commonwealth officers, those at a distance voting by proxy. The Governor, the Magistrates of each town, and two Deputies from each town, were to meet at New Haven in General Court annually in April and October. The General Court was to maintain the purity

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* *Mead*, 28.

† 2 *New Haven Rec.*, 237, 299.

‡ 1 *New Haven Rec.*, 112; *Fowler*, 71.

of religion and "suppress the contrary," make and repeal laws, require their execution by the towns, impose an oath of fidelity upon the people, levy rates upon the towns, and try causes according to the Scriptures. In April, 1644, "the laws of God, as they were delivered by Moses," were adopted as the criminal code of the Commonwealth.*

The records of the General Court from 1644 until 1653 have disappeared, but it is evident that internal difficulties had taken shape during the period covered by the break. In 1653 the General Court remarked with asperity that it had "heard sundrie reports of an vnsatisfying offensive way of cariag in some at Southold, as those w^{ch} grow weary of that way of civill gouerment w^{ch} they haue for diuers yeares (and wth much comfort and safty) liued vnder," and warned the offenders to abate the scandal.† Soon afterward the Governor called attention to a public appeal to the people "to stand for their libberties, that they may all haue their votes and shake of the yoake of gouermt they haue bine vnder in this jurisdiction." In the next year there were incipient rebellions in Southold and Stamford, and it was ordered that "a serious view be made" in each town, and the oath of fidelity be administered to all the inhabitants. Several of the Southold people were haled before the Court for seditiously declaring that this was "a tyrannicall gouerm^{t}." Two years afterward the Court complained that men not church members had been allowed to vote in some of the towns, contrary to the "foundamentall orders," and directed that "these orders be exactly attended." The Southold constables were specially instructed to make a "reformation" in that town.

This persistent attempt to keep the towns in pupilage, and the political power in the hands of church members, contrasted very unfavorably with the policy of Connecticut,

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*1 *New Haven Rec.*, 130.

†2 *New Haven Rec.*, 17.

where, after 1643, the General Court admitted as voters all who were approved by a major vote of any town, with a general property qualification. The struggle was between a free town system and a system of shackled towns; and the latter was at a disadvantage. A strong Connecticut party had grown up before the charter was granted, not only in Stamford and Southold, but in Guilford and Milford. In 1661 several of the magistrates refused to take the oath of fidelity; and the spirit of disaffection had eaten so deep that, if we may accept the unchallenged assertion of the Connecticut General Court, the annihilation of the New Haven jurisdiction, and the absorption of its territory into Connecticut, were urged by the "cheife in gouerment" at New Haven in letters to Governor Winthrop.* This result, as accomplished by the charter in 1662, seems to have been only a hurrying of an inevitable catastrophe.

The Union.

The Restoration in England left the New Haven colony under a cloud in the favor of the new government: it had been tardy and ungracious in its proclamation of Charles II.; it had been especially remiss in searching for the regicide colonels, Goffe and Whalley;† and any application for a charter would have come from New Haven with a very ill grace. Connecticut was under no such disabilities; and it had in its Governor, John Winthrop, a man well calculated to win favor with the new King.‡ The General Court had a clear perception of its proper line of action, and followed up its advantages with promptitude, energy, and success. Its objects were to obtain from the King, in the first flush of the Restoration, a confirmation of the privileges which it had

* 2 *New Haven Rec.*, 536; 1 Mather's *Magnalia*, 78.

† See Secretary Rawson's letter to Gov. Leete in 2 *New Haven Rec.*, 419.

‡ 1 *Hollister*, 207.

evolved out of a free town system, and to remove peaceably the obstacle to complete State-hood which was imposed by the independent position of New Haven. In March, 1660, the General Court solemnly declared its loyalty to Charles II., sent the Governor to England to offer a loyal address to the King and ask him for a charter, and laid aside £500 for his expenses. Winthrop was successful, and the charter was granted April 20, 1662.

The acquisition of the charter raised the Connecticut leaders to the seventh heaven of satisfaction. And well it might, for it was a grant of privileges with hardly a limitation. Practically the King had given Winthrop *carte blanche*, and allowed him to frame the charter to suit himself. It incorporated the freemen of Connecticut as a "body corporate and pollitique," by the name of "The Governor and Company of the English Collony of Conecticut in New England in America." There were to be a Governor, a Deputy Governor, and twelve Assistants (hitherto called Magistrates). The Governor, Assistants, and two Deputies from each town were to meet twice a year in General Assembly, to make laws, elect and remove Governors, Assistants and Magistrates. The people were to have all the liberties and immunities of free and natural subjects of the King, as if born within the realm. It granted to the Governor and Company all that part of New England south of the Massachusetts line and west of the "Norroganatt River, commonly called Norroganatt Bay" to the South Sea, with the "Islands thereunto adioyninge." These were the essential points of the charter,* and it is difficult to see more than two points in which it altered the constitution adopted by the towns in 1639. There were now to be two deputies from each town; and the boundaries of the Commonwealth now embraced the rival colony of New Haven. The former change had already been recommended without

* See the charter in 2 *Conn. Rec.*, 3; and the process of obtaining it in 1 *Trumbull*, 239, and 1 *Hollister*, 202.

result by the General Court; and the latter was longed for by all the leaders of the colony, and was the objective point of the move for a charter. The fundamental point of the constitution, the supreme power of the General Court, was unchanged. Both Connecticut and New Haven had fixed their boundaries of their own will, or by agreement with their neighbors. But the separate existence of the smaller Commonwealth marred the fair proportions of the Commonwealth, in its natural outline, and Connecticut threw the King's sovereignty into her own scale in order to effect a peaceable removal of an obstacle to her complete State-hood. The town spirit built the State, and the King added his benediction to the structure.

New Haven did not submit without a struggle, for not only her pride of separate existence but the supremacy of her ecclesiastical system was at stake. For three years a succession of diplomatic notes passed between the General Court of Connecticut and "our honored friends of New Haven, Milford, Branford, and Guilford." Southold had promptly accepted the charter, and there was a strong party in Stamford and Guilford which desired to take the same course. To strengthen this party, Connecticut appointed or confirmed constables and magistrates in the towns named, and a war of annoyances was kept up on both sides. In October, 1664, the Connecticut General Court appointed the New Haven magistrates commissioners for their towns, "with magistraticall powers," established the New Haven local officers in their places for the time, and declared oblivion for any past resistance to the laws.* In December, Milford having already submitted, the remnant of the New Haven General Court, representing New Haven, Guilford, and Branford, held its last meeting and voted to submit,† "with a *salvo jure* of our former rights and claims, as a people who have not yet

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* 1 *Conn. Rec.*, 437.

† 2 *N. H. Rec.*, 549; *Atwater*, 516.

been heard in point of plea." The next year the laws of New Haven were laid aside forever, and her towns sent deputies to the General Court at Hartford.

One of the propositions made by Connecticut in 1663* was that the New Haven towns should be formed into a distinct county, with its own court. New Haven's refusal to unite on any terms caused this and the other propositions to fall through, and the union was finally perfected without any conditions. But the new General Court, in May, 1666, constituted and bounded the four counties of Hartford, New London, New Haven and Fairfield, and gave them separate courts † and, in the next year, grand juries. The county system of Connecticut is thus only an outgrowth of the union. In 1701 the General Court further voted that its annual October session should thereafter be held at New Haven. This provision of a double capital was incorporated into the constitution of 1818, and continued until in 1873 Hartford was made sole capital by constitutional amendment.

The General Court, in its new form, at once took on all the features of a power superior to the towns, and resting no longer on the towns' authority. The settlement of the boundaries of new and old towns at once became a peculiar field of the General Court; and, until the number of towns increased so far as to form a safeguard, regulation of, and interference in, the civil and ecclesiastical affairs of the towns was far more common and minute than before. In 1685–6 all the towns whose title rested on Indian purchase received patents therefor from the General Court. This step was, for many of the towns, the first real "incorporation:" it may be compared, *mutatis mutandis*, to the conversion of an allod into a feud.

It must, of course, be granted that the state of affairs in Great Britain during the years 1634–60 had very much to do

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* 2 *New Haven Rec.*, 493.

† 2 *Conn. Rec.*, 34, 61.

with this opportunity of the town spirit to build up the form and fashion of a State in Connecticut. Chalmers * sneeringly says of the "little colony of New Haven" that it "enjoyed the gratifications of sovereign insignificance" until Charles II. annexed it, without its consent, to Connecticut. On the contrary, the position of Connecticut was significant in the highest degree. With its neighbor commonwealth of Rhode Island, it held for over a century the extreme advanced ground to which all the other Commonwealths came up in 1775.† King and Parliament sustained the royal veto power over the enactments of other colonies; even Massachusetts lost the power to elect her own Governor; but Connecticut's position still kept alive the general sense of the inherent colonial rights which only waited for assertion upon the inevitable growth of colonial power. The charter of Connecticut was the key-note of the Revolution; and the terms of that charter are due, under God, to the free action of the town system transplanted into the perfect liberty of the wilderness.

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* 1 *Revolt of the Colonies*, 53.
† *Fowler*, 101.

XII

LOCAL GOVERNMENT

AND

FREE SCHOOLS

IN

SOUTH CAROLINA

"Every parish is the image and reflection of the State."—*Thomas Erskine May.*

"The township appears in its ecclesiastical form as the parish or portion of a parish."—*Canon Stubbs.*

"The institutions of any community in the thirteen colonies . . . . are more than a mere object of local interest and curiosity. They show us the institutions of the elder England, neither slavishly carried on nor scornfully cast aside, but reproduced with such changes as changed circumstances called for, and those for the most part changes in the direction of earlier times."—*Freeman.*

"It is the prerogative of self-government that it adapts itself to every circumstance which can arise. Its institutions, if often defective, are always appropriate; for they are the exact representation of the condition of a people, and can be evil only because there are evils in society, exactly as a coat may fit an ill-shaped person. Habits of thought and action fix their stamp on the public code; the faith, the prejudices, the hopes of a people, may be read there; and, as knowledge advances, each erroneous judgment, each perverse enactment, yields to the embodied force of the common will."—*Bancroft.*

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HERBERT B. ADAMS, Editor

History is past Politics and Politics present History.—*Freeman*

XII

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AND
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SOUTH CAROLINA

First Part read before the Historical Society of South Carolina, December 15, 1882.

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Local Government in South Carolina.

(The Parish, the District, and the County.)

The history of the growth of local government in the Southern States presents characteristics which at once distinguish our local unit from that of the Eastern and Western States. In the South the county is the centre of political life. The schools, the roads, the poor, and other local matters are regulated by county officers. In the Eastern States and in many of the States of the Northwest, all such local questions are controlled by the towns* or townships. The political activity of Southern communities is, therefore, less minutely subdivided than elsewhere in the United States; and, as a consequence, there is more centralization in the management of local matters.

This great difference between the local machinery of the two sections of our country is, at first, very strange to the student of American institutions. And when he recalls the fact that the early settlers of Virginia and the Carolinas came from the same land as did the early settlers of Massachusetts and Rhode Island, he is, perhaps, even more impressed with the opposing characteristics of the local institutions of the South and those of the North. The causes of these peculiarities are many. There were the differences between the first settlements of the North and those of the South, and

* The term "town" is liable to mislead those who are only acquainted with the use of the word to express the idea of a larger collection of houses and inhabitants than a village. In the North the term is synonymous with township.

the differences between the settlers themselves. The colonists of the North, notably those of New England, were composed principally of religious refugees, united by the bonds of a common moral idea. Most of the colonists of the South came over simply as Englishmen who wished to better their condition. They were recruited from no particular rank in society. Churchman and Dissenter, Cavalier and Roundhead sat about the same camp fire. Massachusetts was a colony; South Carolina, a province. Compact settlements were necessary on the one hand for the purpose of protection against foreign and domestic enemies; for the purpose of maintaining public worship, and for organizing the government of the infant State. The partial absence of any of these causes left it wholly to the choice of the Southern colonists whether they should found cities or settle in agricultural communities. Their patrons shielded them from the incursions of the red men; although deeply religious, like most genuine Englishmen, they lacked the zeal of fresh converts to a new creed; and their government was in a large measure provided for them. Difference of climate tended to increase the difference produced by these social and moral causes. The rigors of the Northern winters enforced the growth of cities and thickly settled communities. The mild climate of the South favored the cultivation of the soil and the isolation of estates.

There are, however, more points of resemblance between the beginnings of the colonies than are usually supposed. There are similarities of political structure which characterize not only all English settlements of this country, but which reach far back in the past history of our Teutonic race. By a kind of political *atavism*, old institutions re-appear in our history, now clearly and definitely outlined, now only faintly resembling their Germanic prototypes, but everywhere possessing those qualities which distinguish the polity of the Anglo-Saxon race wherever it finds a home.

Nowhere can this divergence from an original identity of political structure be better illustrated than in the develop-

ment of local government in South Carolina. The economic and social peculiarities of this State, its influence on other Southern States, and the successive changes which its constitution has undergone, make it, in many respects, a typical Southern commonwealth. It happens that, though claimed by the Spaniards, named by the French, and settled by the English, South Carolina is an English colony in the fullest sense of that term; for, from England South Carolina received her people, her customs, her laws, and that ancient religious system which wove itself so thoroughly into her political texture during the early years of her provincial life.

By their charter, the proprietors of South Carolina were vested with great powers and privileges. These noblemen seemed to have cherished the idea that they were founding a mighty empire. The great philosopher, John Locke, who was a personal friend of one of the proprietors, the Earl of Shaftesbury, previously known as Anthony Ashley Cooper, was employed to frame a constitution for the government of the future province. Locke finished his labors in 1669, and presented his "Fundamental Constitutions." The form of government was amended by Shaftesbury. These fundamental constitutions had for their object the better government of the province, and were adopted in order "to avoid erecting a numerous democracy." * The province was erected into a county palatine, like that of Durham. The eldest of the Lord Proprietors was to be Palatine, and, at his death, the eldest of the seven surviving proprietors was to be his successor. The other officers were admirals, chamberlains, chancellors, constables, chief justices, high stewards, and treasurers. The whole province was divided into counties. Each county consisted of eight signiories, eight baronies, and four precincts, each precinct consisting of four colonies. The eight signiories were the share of the eight proprietors, and consisted of twelve thousand acres each. The baronies belonged

* Preamble of the Fundamental Constitutions.

to the nobility of the province, and also consisted of twelve thousand acres each. The nobility of the province were the "landgraves" and "cassiques." There was a landgrave for each county, and twice as many cassiques as landgraves. In every signiory, barony, and manor, its respective lord had power to hold a court leet for the trial of civil and criminal cases. Every manor consisted of not less than three thousand acres. Every lord of a manor enjoyed the same powers, jurisdictions and privileges which appertained to a landgrave or cassique in his baronies. County courts were erected in each county. These courts were composed of a sheriff and four justices, one from each precinct. There were also precinct courts, each of which consisted of a steward and four justices of the precinct. Every jury consisted of twelve land owners, and a verdict was rendered according to the consent of the majority.*

Such in brief is the substance of this remarkable frame of government. It never went wholly into operation and was abrogated by the proprietors in 1693. It is chiefly interesting as showing the first attempt to provide a system of local government for the province. But time and experience illustrated that this could be successfully provided for only by the people themselves. The early methods of local administration in the province are wrapt in obscurity. The early acts of the provincial parliament† relative to the management of highways, the organization of the militia, the raising of revenues, and the punishment of various offenses against law and morality, are not now to be found. Only their titles have been preserved.

One of these old laws, the title of which is frequently encountered, reads as follows: "At a Parliament held at Charlestowne, at the house of Mr. Anthony Lawson, the

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* Charters and Constitutions of the United States, part 2, pp. 1397–1408.

† The first assembly in the province was for several years known as the Parliament.

eighth day of December, 1691, Annoque Regni Regis et Reginae . . . tertio. An Act for the Better Observance of the Lord's Day, commonly called Sunday. Forasmuch as there is nothing more acceptable to Almighty God than the true sincere performance of and obedience to the most divine service and worship, which although at all times, yet chiefly upon the Lord's Day, commonly called Sunday, ought soe to be done, but instead thereof many idle, loose, and disorderly people doe wilfully profane the same in tipling, shooteing, gameing, and many other vicious exercises, pastimes and meetings, whereby ignorance prevails and the just judgment of Almighty God may reasonably be expected to fall upon this land if the same by some good orders be not prevented; Be it therefore enacted by the Pallatine and the rest of the Lords and absolute Proprietors of this Province, by and with the consent of the Commons in this present Parliament assembled, and it is hereby enacted by the authority of the same, that from and after the ratification hereof, all and every person and persons whatsoever shall on every Lord's Day apply themselves to the observation of the same,"* etc. This would seem to argue that the Puritans were not the only colonists who enforced the local observance of the Sabbath and church attendance.

The nearest approach to any system of local government beyond the limits of municipalities is found in the creation of the parishes. The parish was, of course, introduced after the establishment of the Episcopal Church. But the establishment of the Episcopal Church in the province was only brought about by stealthy innovations and in the face of much opposition. In 1698 a maintenance was settled by law on a minister of the Church of England at Charlestown.† This act, however, did not encounter serious hostility, owing to the popularity of the minister and the small sum voted

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* Statutes at Large of South Carolina, Vol. II, pp. 68 and 69.

† Statutes at Large of South Carolina, Vol. II, p. 135.

him.* A few years later, in 1704, through the influence of the proprietors and civil officers, the Church of England secured a legal establishment, notwithstanding the fact that the Episcopalians had only one church in the entire province, while the Dissenters had four. In this year a majority of representatives were sent to parliament who were members of the Church of England.

Soon after the organization of the provincial parliament the new members succeeded in passing a bill which virtually excluded all Dissenters from that assembly. But this oppressive measure was soon afterwards repealed. The Episcopalians, nevertheless, continued to rule the province. Laws were passed for the maintenance of ministers, the erection of churches and chapels, and the division of the counties into parishes.† The parishes were of various sizes, and in 1706 their bounds were definitely set by law.

The principal officers of the parish were the rector, the vestrymen, the churchwardens, the overseers of the poor, the sexton, the clerk, the register, and the commissioners of roads. At the head of the spiritual welfare of the parish was the rector. During his ministration he could enjoy the use of the glebe-lands, the buildings of the parish (except one room in the rector's house at Charlestown, which was reserved for a parochial library), all the negroes that belonged to the parish with their increase, and the parish cattle with their increase. He also received a salary from the province varying in amount according to the church. The rector was chosen by the parishioners, but a vacancy was filled by the vestry, which proceeded to an immediate election. No rector was allowed to marry parties contrary to the table

* Ramsay, Vol. II, pp. 2–10. Also for a very excellent history of the church in South Carolina, see Dalcho's Church History.

† Statutes at Large of South Carolina, Vol. II, pp. 232–246. Also Grimké's Collection of the Public Laws of South Carolina, pp. 11–12.

of marriages. He could not hold a seat in either branch of the legislative assembly.*

The duties of the vestrymen were both civil and ecclesiastical, and were copied from the duties of the corresponding office in England. In the words of the law describing their qualifications and powers, the vestrymen were elected for the "promotion of the good laws of the Province and the easy despatch of parish business."† They were, moreover, to be "sober and discreet men." Their number, besides the rector, was at first nine and later seven, all residents of the parish. They were chosen yearly by the freeholders and taxpayers of the parish. The election was held on Easter Monday at the parish church. The parish church seems to have been both the civil and religious centre for transacting local affairs. On the doors of the church were posted all important public notices. After his election each vestryman was required to take the oath of office.

The next officer in the parish was the churchwarden. There were two of these in each parish. They assisted the vestrymen in keeping the parish buildings in order. In conjunction with the overseers of the poor, they had a general supervision of the pauper class of the parish. They also managed the parochial elections. The overseers of the poor were yearly nominated by the vestry. Rich people having poor relatives were compelled to assist them. The poor were relieved from various public moneys and fines. A person who, in moving from one parish to another, might become a pauper, could be

* "The ministers of the gospel are by their profession dedicated to the service of God and the care of souls, and ought not to be diverted from the great duties of their function, therefore no minister of the gospel or public preacher of any kind . . . shall be eligible either as governor, lieutenant governor, a member of the senate, house of representatives or privy council in this State."—Constitution of South Carolina of 1778, Section XXI. This disqualification no longer exists.

† Statutes at Large of South Carolina, Vol. II, p. 290, Sections XXVIII, XXIX, XXX, XXXI and XXXII.

returned to the parish whence he came.* Poor children were bound out by the churchwardens and the overseers of the poor. A register was kept of the names of persons receiving aid. The churchwardens and overseers of the poor were to account yearly before the vestry for all money spent.† Neglect of duty was punished by a fine.

The sexton, the clerk, and the register of births were appointed by the vestry. They received a small perquisite attached to their office. Parishioners had a right to inspect the records of the parish at any time and to take exceptions to them, if they thought proper. In the parish register were contained all the deaths and christenings of parishioners, except those of negroes, mulattoes, and slaves.

The commissioners of the roads were elected by the freeholders of their respective parishes. In 1719, the parishes were made election districts and each parish sent representatives to the commons' house of Assembly. In some cases two

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* Public Laws of South Carolina, p. 105, Section V.

†A few of the old Records and Registers of the parishes are still in existence. Through the kindness of the Rev. John Johnson, of Charleston, the writer was permitted to have access to some of the Records of the old parishes of Prince Frederick's and St. Thomas. Some of these still exist in a remarkable state of preservation, while others are fast going to decay. It is to be hoped that efforts will soon be made to have these important historical materials rescued from destruction. It may not be uninteresting to subjoin one or two extracts from these Records, kindly furnished by the Rev. Mr. Johnson.

"Complaint made that the widow Hughes a poor woman living near the church was a starving she and children/ agreed this day that the Wardens take the Two Bjgest Children and Put them out apprentices in creditable houses and that the Widow go to work to maintain herself and young child as she is very able & a Great deal of spinning offered her."—27 Sep 1777.

"Agreed that Margaret Marten shd. be allowed £10 pounds pr week for her maintenance and cloathing at the expense of John McNight her son."—20 May 1779."

parishes united in sending delegates.* It must not be presumed that the parishes, when first created, were complete political divisions of the province. Far from it. Their importance and status in this regard were acquired years after their erection. Their growth from ecclesiastical to political divisions was, however, gradual and sure. From a territorial division for church purposes, they slowly passed into a political division possessing many of the attributes of a self-governing community.

The early legislators of the colony were deeply impressed with the importance of local education.† So dominant was this idea that it had much to do with the establishment of the Church of England in the province, and the division of the counties into parishes in order to obtain aid from the society for propagating the Gospel in foreign parts. This society, which was established in the mother country, only lent its aid to those colonies in which flourished the Episcopal Church. The society soon seconded the efforts of the colonial educators, and lent its aid in supplying parish ministers and teachers. Parochial libraries were founded and parish schools were established, at first under the immediate control of the vestrymen.

The history of popular education in South Carolina dates from these beginnings. As far back as 1712, a free school

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*Statutes at Large of South Carolina, Vol. III, pp. 50–55.

By the provision of this act, the parish of St. Philip's, Charlestown, sent five members; Christ Church, two; St. John's, three; St. Andrew's, three; St. George's, two; St. James', Goose Creek, four; the parishes of St. Thomas' and St. Dennis', three; the parish of St. Paul's, four; St. Bartholomew, four; St. Helena, four; and St. James', Santee, with Winyaw, two.

†No view is more erroneous than that which represents the lack of educational facilities in South Carolina during colonial days. Mr. McMaster, in his recent work on the History of the People of the United States, says that in no colony was so little attention paid to education as in South Carolina. It is pleasant to note the letter of Colonel Edward McCrady, Jr., of the South Carolina Historical Society, in the *Nation*, July 5, 1883, disproving Mr. McMaster's statement.

was established in Charleston. Similar institutions were planted at Dorchester, Childsbury, Beaufort, Ninety-Six, St. Thomas' Parish, St. James (Santee) and elsewhere. Many of these schools owe their origin to legacies bequeathed them by generous parishioners, like Beresford, Ludlam, Childs, and others. With the growth of primary education, the demand for the higher education increased, resulting in the establishment of several academies and no less than five colleges before the expiration of the eighteenth century. Many charitable societies also maintained schools, usually for the education of the poor. Constant public encouragement was given to education by donations, immunities, and by vesting, in school boards, escheated property in villages or parishes. In some cases, especially during early times, even slaves were taught to read.* The parishes were confined to that portion of the State which was first settled—the region near the coast—but they gradually increased in number.

In some instances plans for settling new parishes were based on the *hundred*. The method is thus described by Ramsay:† "According to a new plan, adopted in England, for the more speedy population and settlement of the province, the governor had instructions to mark out eleven townships in square plats on the sides of rivers, consisting each of twenty thousand acres; and to divide the land within them into shares of fifty acres for each man, woman, and child that should come to occupy and improve them. Each township was to form a parish, and all the inhabitants were to have an equal right to the river. So soon as the parish should increase to the number of an hundred families they were to have a right to send two members, of their own election, to the assembly, and to enjoy the same privileges as the other parishes, already established. Each settler was to pay four shillings a year for every hun-

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*Carroll's Historical Collections of South Carolina, Vol. II, pp. 538–568.

† History of South Carolina, Vol. I, pp. 108–109.

dred acres of land, except the first ten years, during which term they were to be rent free. Accordingly ten townships were marked out, two on river Altamaha, two on Savannah, two on Santee, one on Pedee, one on Wacamaw, one on Wateree, and one on Black river."

Contemporary with the adoption of the parish system was the creation of the patrol.* It was a sort of police of the parishes. Its objects and functions are best set forth in the preamble to the act establishing it, passed November 4, 1704. The act is entitled "An Act to settle a Patrol."† It thus states the object of the patrol: "Whereas on the sight or advice of an enemy it will be necessary for the safety and defence of the inhabitants of this Collony to draw together to the sea coast, or such other place as the Generall shall direct, all the forces thereof; to prevent such insurrections and mischiefs as from the great number of slaves we have reason to suspect may happen when the greater part of the inhabitants are drawn together," etc. In the early days of the province, constant petty expeditions were fitted out by the Spaniards from Saint Augustine against Charleston, and, in retaliation, by Charleston against Saint Augustine. Soldiers were therefore kept constantly employed in defending the coast. The large number of slaves in the province made it extremely dangerous to leave the wives and children of the soldiers unprotected from servile insurrection. The patrol was therefore, in its inception, a homeguard. Its organization, with some modifications, lasted through the lights and shadows of almost two centuries of slavery. The patrol provided themselves with horses, pistols, and guns, and were ready to appear on duty at any alarm. Under the direction

* According to Skeat, the word patrol is from the old French verb *patrouiller*, to paddle. There is no connection, however, between the word and the peculiar method of corporal punishment which it suggests. The verb is formed from the noun *patte*, the paw or foot of a beast, and hence it came to mean a going of the rounds.

† Statutes at Large of South Carolina, Vol. II, pp. 254–255.

of their captain, they rode from plantation to plantation and arrested all slaves on the road who were found without a pass from their owner. The student of English constitutional history will not be slow to recognize in the patrol the *straet-warden* of the king's highway. Like its old English prototype, the patrol could not maltreat a prisoner, and was, moreover, answerable before the law for good behavior.

From what has previously been said it will be inferred that the parish of South Carolina is of English and not of French origin, as is often stated. The parish of South Carolina and the parish of Louisiana are radically different. The Louisiana parish corresponds to the county in other States. The South Carolina parish was a subdivision of the county, and in character more nearly approached the Northern and Western township. It is true that, after the revocation of the Edict of Nantes, large numbers of Huguenot refugees came over to the province. A majority of the inhabitants of the parishes of St. Dennis, in the Orange quarter, and St. James, on the Santee, was composed of French settlers. But they did not arrive until the English were firmly established elsewhere in the Carolinas. Besides, the English were too jealous of the French to allow them any influence at all, and for a while excluded them from the legislature. This spirit of intolerance in time passed away. The proprietary government, having become burdensome to the people, was overthrown in 1719, and the people put themselves under the direct control of the King. The parishes continued to extend their organization. Charleston remained the centre of political power. Here was the provost marshal, or sheriff of all the province, and here also, for a long time, was held the only court. But a change was destined to ensue. Already the division between North and South Carolina had taken place.* The colony was soon to become the seat of a struggle between two oppos-

* The division was formally made about 1729, but it had practically existed many years before.

ing systems of local government. One of these systems represented the old Teutonic idea of the township as it was afterwards merged into the parish; the other was the later county system. It is noteworthy that the two systems of local government which have struggled for the mastery in this country should have so early encountered each other in South Carolina.

The District.

Until near the middle of the last century the inhabited portion of South Carolina was confined to the parishes which fringed the coast. After the overthrow of the proprietary government and under the more immediate management of the Crown, a steady stream of immigration poured in from the old country. The newcomers were principally composed of English, French, and Irish, with a few Scotch, all of whom settled in the parishes. At the same time, the northern portion of the colony was rapidly settled by an entirely different class of people, colonists from the present Middle States, from Virginia and North Carolina. The settlements of these sturdy pioneers were confined to the mountain regions and to the fertile valleys of the interior. A wide space of intervening territory separated them from the inhabitants of the parishes. The sections of the colony became, to all practical purposes, two distinct colonies. This was most unfortunate and became the seed of much discontent in after years.* The lower section was rich, strong, and powerful. It possessed some good schools, many intelligent men, and an attempt at local government. In its constitution and character it approached the colonies of New England and Virginia. The upper section more nearly resembled a Western territory of the

* Indeed, the local disputes between the "up country" and the "low country" still survive in many instances, though not with the same degree of animosity as in former times.

present time. It was largely composed of rough pioneers, who, dissatisfied with their condition in the older colonies, had removed to this unexplored portion of South Carolina.

Some effort was made as early as 1725 to establish county and precinct courts, but the general court in Charleston soon absorbed all judiciary proceedings.* For many years there was but one sheriff for the whole colony, and he held his office by patent from the Crown. He was subjected to the same penalties as a sheriff in England. At this time all civil and criminal cases were tried in Charleston by the general court. The justices of the peace could have no jurisdiction in any cause which involved more than twenty pounds. A court of chancery, consisting of the governor and a majority of the council, had been established in 1721.† There were also two other courts; a court of the King's bench and common pleas, and a court of vice-admiralty. But the general court at Charleston was the most powerful judicial assembly of the colony. All criminal, as well as all civil cases, were tried in this court, a fact which necessarily produced much inconvenience and disorder. To punish a horse-thief or prosecute a debtor one was sometimes compelled to travel a distance of several hundred miles, and be subjected to all of the dangers and delays incident to a wild country. For the purpose of expediting the administration of justice and of summarily punishing criminals, the settlers began to organize themselves into bands and, under the name of "regulators," endeavored to control local affairs. Alarmed at these proceedings, the colonial government manifested some disposition to improve the condition of the colonists of the upper section.

In the preamble to an act entitled "an Act for establishing Courts, building Gaols and appointing Sheriffs and other officers for the more convenient administration of justice in

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* Brevard's Digest, Vol. I, pp. v–xx. Ramsay, Vol. II, pp. 125–159.
† Statutes at Large, Vol. III, p. 284.

this Province,"* passed in 1768, the Assembly thus organizes the defective system of government for the up-country: "whereas, the establishing courts, building gaols, and appointing sheriffs in different parts of this Province, under proper regulations, will tend to promote the interests of our most glorious Sovereign and his good subjects therein, also to preserve their just rights, liberties and properties and the public peace, inasmuch as the distance from Charleston of many persons who, however remote from thence, are often obliged, either as parties, jurors or witnesses, to attend the courts at present held there for trial of all criminal causes and of all civil actions exceeding the value of twenty pounds current money . . . which hardships deter numbers of people from becoming inhabitants of this Province, etc." The Assembly then proceeded to create new district courts at Beaufort, Georgetown, Cheraws, Camden, Orangeburgh and Ninety-Six. The title of provost marshal was purchased from its holder for the sum of £5,000 sterling, and seven new sheriffs were appointed, one for each new district and one for Charleston.†

The courts held in Charleston were not Circuit Courts. Brevard regards them in the same light as "the Courts of Westminster Hall in England." In the new Circuit Courts the judges could render a decision, in some small cases, without a jury, provided both litigants agreed to this summary method of settling their dispute. The right to a trial by jury, however, was not denied. The creation of the district courts and of the district was the historic origin of local government in the up-country, although the inhabitants of the district did not even possess the right of electing their own sheriff.

Owing to the vast size of the district, the same evils that had been experienced under the old judicial system began to make themselves felt with the increase of population.

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* Statutes of South Carolina, Vol. VII, 197–205.

† Ramsay.

Accordingly, steps were soon taken to improve further the administration of the judiciary by decreasing the size of the districts. It was now that the constitutions of the older colonies began to exert their influence on South Carolina. The General Assembly, at its session in 1783, considered the propriety of dividing the districts "into counties of convenient size, of not more than forty miles square, unless where the number of inhabitants and situation of the lands require some deviation."* Commissioners were appointed for each district, whose duty it was to "fix and ascertain" the boundary lines of each district and county. Two years later, in 1785, the districts were divided into thirty-four counties, as follows: NINETY-SIX into the counties of Abbeville, Edgefield, Newberry, Laurens, Union and Spartanburgh; CAMDEN district into the counties of Clarendon, Richland, Fairfield, Claremont, Lancaster, York, (new acquisition) and Chester;† CHERAWS into Marlborough, Chesterfield and Darlington; GEORGETOWN into Winyaw, Williamsburgh, Kingston and Liberty; CHARLESTON into Charleston, Washington, Marion, Berkeley, Bartholomew and Colleton; BEAUFORT into Hilton, Lincoln, Granville and Shrewsberry; and finally ORANGEBURGH district was divided into Lewisburgh, Orange, Lexington and Winton counties.‡

The county system was introduced through the influence of Henry Pendleton, a settler from Virginia, and was closely modeled after the county system of that colony.‖ Seven Justices of the Peace were elected for each county by the General Assembly, and court was held by them every three months.§ They held their office during good behavior, and filled all vacancies in their number by co-optation. Three

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* Statutes at Large, Vol. IV, p. 561.

† The influence of Pennsylvania is seen in the names of the counties.

‡ Vol. IV, pp. 661–664.

‖ Ramsay.

§ O'Neall's Annals of Newberry District, pp. 12–22.

of the justices constituted a quorum. The county courts never extended to the parishes. The Episcopal Church ceased to be the established church of South Carolina when the British government in America was overthrown by the war for independence. The parish system, however, was still retained by the inhabitants of the low-country. All the political power and patronage were still wielded by the inhabitants of the parishes, and the up-country possessed no influence whatever. By the constitution of 1776, the low-country was allowed twice the number of representatives enjoyed by the up-country, though the latter was perhaps the more populous. This privilege produced much dissatisfaction.

After an experiment of a few years, the county system and the county courts were abolished. The name of "district" was substituted for that of "county," and this form was preserved until after the close of the civil war. With the increase of population and education, the districts gained the privilege of electing some of their own local officers, such as sheriffs and clerks of courts. The general economy of the district differed little from that of the county in other States, with the exception of the absence of a district court. The districts were grouped into judicial circuits, and the circuit judge traveled from one court of his circuit to another.

The manifest injustice in the distribution of the power and representation of the State continued to produce much dissatisfaction in the up-country. By the constitution of 1790 the cause of contention was in a measure adjusted. Each district was allowed one senator and two or three representatives. But even this concession on the part of the low-country was far from being entirely satisfactory to the inhabitants of the districts, for it still left them with a minority representation, though possessing a much larger population. Each parish was allowed to send a senator to the assembly, and Charleston was allowed to send two, one for each of the parishes of Saint Philip and Saint Michael. Each parish also

sent two or more representatives to the Assembly.* The parishes steadily opposed any increase of power on the part of the districts. The districts were equally determined to secure a more equitable apportionment of representation and a more equal share in the government. Again and again unsuccessful attempts were made to effect a harmonious settlement of the dispute. The capital was in time moved from Charleston to the new town of Columbia in the interior.† By an amendment to the constitution, in 1808, the house of representatives was made to consist of one hundred and twenty-four members, half of whom represented the white population and half the taxables.‡ The constitution of the senate remained unchanged. The senate was therefore controlled by the low-country and the house of representatives by the up-country. As the governor, the judges, and all other important officers were appointed by the Assembly, the provisions of this amendment were readily accepted by both sections of the State. A sort of double government was instituted. Part of the public officers resided in Charleston and part in Columbia. There was a treasurer for the low-country and one also for the up-country, and, with very few modifications, this system was preserved until after the close of the civil war. The organization of the district was preserved in the up-country and that of the parish in the low-country.

After the close of the civil war, in obedience to the proclamation of President Johnson and the orders of Provisional Governor Perry, a convention of the people of South Carolina assembled in Columbia September 13, 1865, to re-organize the State government. The ordinance of secession was repealed and a new constitution adopted. Many of the changes in the constitution and improvements in the methods of

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* Constitution of 1790, Article I, Sections 3–8.

† The act for laying off the town of Columbia and erecting the new State buildings therein was passed by the Assembly March 22, 1786. See Statutes of South Carolina, Vol. IV, pp. 751–752.

‡ Amendment of 1808. Also Calhoun, Vol. I, pp. 402–406.

local government were suggested by Governor Perry in his message to the convention.* "The great political convulsions which have taken place in the Southern States," said he in his message to the convention, "and the terrific war which has swept over South Carolina, devastating her territory and depriving her citizens of all civil government, are too well known to you, and too painful in their detail, for me to bring them unnecessarily in review before you. Instead of dwelling on the past, and grieving over its errors and misfortunes, let us, with manly fortitude, look to the future, and accommodate ourselves to the circumstances which surround us, and which cannot be changed or avoided. The President of the United States has manifested a generous and patriotic solicitude for the restoration of the Southern States to all their civil and political rights, under the Constitution and laws of the United States. He desires to see the Federal Union reconstructed as it was before the secession of those States; and he will oppose the centralization of power in Congress, and the infringement of the constitutional rights of the States, with the same zeal, energy and power with which he resisted the assumed right of secession on the part of the States. In order to accomplish this re-union of the States, the President desires that South Carolina, as well as all the other States in rebellion, should accept as inevitable and unavoidable the great final results of the war."

The parishes were abolished and the district system was extended to the low-country. The triumph of the district over the parish was complete when Charleston district, instead of the parishes of Charleston, sent its delegation to the Assembly. Boundaries of the judicial and election districts remained unchanged. The semi-duplicate form of State government was abolished, and provision was made for only one treasurer, with his office at Columbia. Slavery was forever prohibited in the State; the "freedmen," however, were not enfranchised.

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* Message No. 1, Journal of the Convention, pp. 11–19.

Governor Perry thus speaks of the aristocratic character of the government of South Carolina: "The General Assembly of South Carolina is an electoral college for the State as well as a legislative body. They have the election of Governor, electors of President and Vice-President, Lieutenant Governor, United States Senators, Judges and Chancellors, all State officers, Magistrates, Commissioners of Roads and Bridges, Poor and Free Schools, Commissioners and Masters in equity, and various other officers. This embarrasses legislation, occupies a great deal of the time of members, and is productive of evil consequences. The most of these elections and appointments should be taken from the legislature."*

Acting upon this wise suggestion, the power of the legislature was greatly diminished. Many of the officers who had formerly been appointed by the legislature were made elective. Local government was also greatly increased. The period embraced by the operation of this constitution is, however, so short and so full of the anarchy and disorders engendered by the great civil conflict as to be almost devoid of any local government.

The County.

The county system is the present system of local government for the whole State of South Carolina. By the constitution of 1868, commonly known as the reconstruction constitution, the district was abolished and the county erected in its stead.† Various amendments have been made to the con-

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*Journal of Convention of 1865, page 15.

†This constitution was framed by a convention (called under the reconstruction acts of Congress by Major-General Canby). It assembled at Charleston, January 14, 1868, and completed its labor March 17, 1868. The constitution was submitted to the people April 14 and 16, 1868, and was ratified by 70,000 against 27,288 votes. It may further be added that the "freedmen," who voted at the election, were unanimously in favor of the constitution. See Charters and Constitutions, Part II, p. 1646.

stitution since that time, especially since the overthrow of the reconstruction government, but the main features of the county system remain the same now as when first adopted. Without commenting on the particulars of these changes, it may be best to give some account of the operations of the county system in the State; to enumerate the officers and their respective duties, and briefly to describe the other characteristics of local government as it exists in South Carolina at the present day.

The entire State is divided into thirty-four counties, which are bodies politic and corporate, and can sue and be sued.* They also possess many other rights which are usually enjoyed by corporate bodies. Each county, with the exception of Charleston, sends one senator to the State Senate. In Charleston there still remains a faint survival—more traditional than real—of the old parish system. That county is, therefore, entitled to two senators, one for each of the old parishes of St. Philip's and St. Michael's. The present house of representatives consists of one hundred and twenty-four members, who are apportioned among the several counties according to the population in each. Some counties send to the house of representatives two, others five, and Charleston as many as eighteen members. Both senators and representatives are elected by the qualified voters of the county, and each receives a salary of five dollars per diem during a session of the Assembly. They are also entitled to mileage at the rate of ten cents a mile for the distance travelled in going to and from the meetings of the Assembly. A senator serves for four years and a representative two years. The following officers are also elected by the people: a sheriff, a clerk of the Court of Common Pleas and General Sessions, a judge of probate, a school commissioner, three county commissioners and a coroner.

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* General Statutes of South Carolina, 1882, pp. 182–326.

Except the municipalities, there is no political division of the State beyond the county. The township exists barely in name. There is no assembly of the inhabitants of the county for the discussion of local business. The county commissioners have jurisdiction over all roads, ferries and bridges. These commissioners also control all matters relating to taxes, disbursements of money for county purposes, and all other business pertaining to the internal improvement and local concerns of the county. Each township constitutes a highway district, the superintendent of which is appointed by the county commissioners. Each highway district is expected by law to be divided into sections of from two to five miles, and in each section an overseer of roads is required to be appointed by the superintendent of highways. All able-bodied men between the ages of sixteen and fifty years are liable to road duty. They must work on the roads not more than twelve nor less than three days yearly, or instead pay one dollar a day for each day required. In every county there is provided a poor-house, with a farm, for the accommodation of the pauper class. The county commissioners are the overseers of the poor, and provide employment and comfort for the inmates of the poor-house. The commissioners bind out poor children, and may also send all pauper lunatics, idiots, and epileptics to the State lunatic asylum.

The school commissioner has a general oversight of the free schools in his county. The city of Charleston constitutes an exception, having her own superintendent of schools. The school commissioner and two other persons appointed by the State board of examiners constitute a county board of examination, and examine all applicants for teachers' positions. In each school district three men are appointed by the county board of examiners, who constitute the trustees of the district. An annual tax of two mills is levied by the county commissioners for the support of free schools. The money raised by the tax is distributed among the school districts in proportion to the number of pupils attending the free schools.

The county in South Carolina differs from the county in many other States from the fact that it possesses no judicial organization of its own. We have already seen that two unsuccessful attempts were made to introduce the county courts into the State in early times. But the system failed from various causes. The counties, like their institutional predecessor, the district, are grouped into judicial circuits, and a judge is elected by the legislature for each circuit. In each circuit there is also a solicitor, who is elected by the qualified voters of the circuit. The governor, with the advice of the senate, appoints a number of trial justices for each county. Their number depends entirely upon the demands of the county. The justices hold their office for two years and have jurisdiction over offenses in which fine or forfeiture is under one hundred dollars and imprisonment is less than thirty days. Trial justices appoint their own constables.

The jurisdiction of the court of the probate judge is very limited in character. It only extends to those matters testamentary and administrative which cannot be conveniently decided in the other courts. It also has jurisdiction over all business pertaining to minors and the allotment of dower, and in cases of larceny. The following county officers are appointed by the governor: the auditor, the treasurer and the master in equity. The present system of local government is far from being a satisfactory one to the inhabitants of the State. Many of the counties are very large, which makes it exceedingly inconvenient to those who live at a great distance from the county seat. The results are bad roads, worse bridges, and an imperfect system of free schools—a system which lacks the stimulating support of local taxation.

There is a growing demand for an improved system of local administration. This desire manifests itself in various ways, although a constitutional amendment looking towards the reduction of the size of the counties was lately defeated. A step in the right direction was taken by Governor Thompson, in his inaugural address, where he strongly advo-

cates local taxation for the support of the free school system.* A bill looking to that end was rejected in the senate in 1882. No better comment upon the rejection of this measure can be made than that already expressed by the Charleston *News and Courier:* "It was a mistake, we think, to reject the senate bill permitting the levying of local taxes for educational purposes to supplement the proceeds of the State tax. The general tax cannot be increased. It is as high as the people can bear, but each locality, knowing its own needs and its own ability, should be free to raise an additional fund under authority of law, if it desired to do so."†

The future development of local government in the State will be in the direction of local support of the free schools. Local control will follow close upon local support. In other words, the school house will be for the new South Carolina what the church was for old South Carolina and for New England, namely, the parent of local self-government. When once the advantages of local support for schools are seen in the greatly improved condition of Southern education, the system will extend to the local control of the poor, the roads, the bridges, and all other common affairs now under the control of the townships throughout the West.

Such is the outlook for local government in South Carolina. Historically, the parish, the district, and the county are inseparably connected. They approach, meet, and overlap each other in the two centuries of South Carolina history. Everywhere they identify themselves with those principles of self-government, the continuation of which has made the English race what it is in the Old World and in the New.

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* Those who have read Governor Thompson's reports on free schools while he was Superintendent of Education will know that this idea of local taxation for free schools is strongly urged.

† Charleston *News and Courier*, December, 1882.

Free Schools in South Carolina.*

It is often urged as a matter of reproach that the more Southern colonies of our Union failed to establish common schools, while their sister colonies were earnestly striving to provide for the general enlightenment of the population; that the Southern States continually discouraged school-establishment, and that, on the whole, the Southern people are opposed to the entire system of common school education. Now, this is a grave charge. If it can be supported by sufficient evidence, one might almost call it a crime on the part of the Southern people. Indeed, it would be something extraordinary and almost paradoxical, if, in an English colony and among English parishes, men could be found opposing the education of their fellows of the same race and blood. It would be something anomalous in the annals of the English people. A recently deceased Baltimore newspaper once published the astounding fact that "no such thing as free schools were known in the South before the late war, and that the oldest of them have only been in existence for a few years!"

As a matter of fact, schools for the education of the people were among the earliest institutional germs in the Southern States. To discover these germs, we have only to look into the early legislation of South Carolina. This particular State

Authorities.—Statutes at Large of South Carolina. Acts of the General Assembly. Ramsay's History of South Carolina. Simm's History of South Carolina. Dalcho, Episcopal Church in South Carolina. Reports of the Superintendent of Education. Mayor Courtnay, Education in South Carolina. Carroll's Collections.

is taken as an example, not because common schools have no history in other Southern States, or because the State of South Carolina has done any more in this direction than any of her neighbors. Perhaps other States have furnished as good a record, and some may have done even more for popular education. But inasmuch as the old institutions and customs of the mother country were so perfectly reproduced in South Carolina; and, further, because from South Carolina so many other Southern communities have gone forth; and, lastly, because her public policy and history have so often been the public policy and history of the whole South,—a sketch of free school legislation in South Carolina may serve as a typical sketch of the beginnings of Southern education.

Of course, certain peculiar circumstances and local conditions must be taken into account in such a study as is proposed. The effect of climate upon the habits, customs and industries of communities should be remembered. The state of society must be examined. And especially should be noted the nature of the chief occupation of the inhabitants. Indeed, these things must be investigated in the study of any social question, and it is highly necessary in considering the question of free schools.

The climatic influences on the early settlers of South Carolina are at once seen by the tendency of the people to engage in rural pursuits. From the earliest times, the principal occupation of the people was agriculture. Experience has abundantly shown that the exclusive pursuit of this industry is unfavorable to the general diffusion of knowledge. *Pagan* and *heathen* still suggest by their etymology the characteristic ignorance of the rural population in classic Italy and in mediæval Europe. Even in our own time and generation, we look to the great centres of population and of wealth for the higher development of systems of education. In such communities the people are collected together and their children can be conveniently educated. Moreover, there is the additional advantage, in such communities, of obtaining that superior train-

ing which only the friction of ideas can give. Until very recently, little attention has been devoted in South Carolina to manufacturing interests. In almost all Southern communities, manufactures, as such, from the very nature of English colonization in that section, were almost totally neglected, and it may be seriously questioned whether they will ever be extensive in the South. From the pursuit of agriculture to the almost total exclusion of any other occupation, the growth of municipalities was slow. One should not expect, therefore, to find that the development of the common school system in South Carolina was as rapid as in other colonies where the industries of the people were more varied. It goes without saying that it would be absurd to compare the growth of free schools in the manufacturing communities of New England with the free schools of the agricultural communities of the South, and thereupon urge that the one section upheld the system, while the other opposed it. Rather let the comparison be made, if made at all, between the free school system of the South at one period of history, and the free school system of the South at another period.

As to the social aspect of our study, it may be said that slavery existed in South Carolina from very early times. This fact prevented the growth of a strong middle class out of whose ranks the patrons of common schools are so strongly recruited. The common people which was generated in South Carolina was that hybrid of slavery and freedom known in provincial language as the "poor white trash." This class was perfectly contented so long as it maintained a questionable superiority over the negro, and so long as nature afforded it a means of subsistence without toil, without money, and without price. The semi-tropical climate of the South afforded ample means for satisfying human wants by hunting and fishing. Poaching prevailed on the remote lands of the planters, and thus the "poor white trash" eked out an existence as precarious as that of the Indian, and cared as little as the savage for education and restraint. Little

could be done, therefore, in this direction by common schools. Of course, little effort was made to educate the slaves, though, as we shall presently see, the attempt was successfully made in the early days of the colony.

But if the agricultural pursuits and social condition of South Carolina had such an influence upon its educational economy, the very nature of the agricultural pursuits contributed largely to render the school system different from other systems. It is easy to conceive of the evolution of an almost perfect system of free schools in those communities where only a small farm is amply sufficient to support an entire family. In such communities of small farms, with dwellings in sight of each other, the children can conveniently and safely attend school. The case was entirely different in South Carolina. From the very first settlement of the colony, there was a constant tendency on the part of the settlers to occupy large plantations. After the introduction of great staples, such as cotton and rice, this tendency increased.

The growth of towns, with all their good effects upon free schools, was a small factor in the educational history of South Carolina. Indeed, there was scarcely any town worthy of the name outside of Charleston. All life was spent on the plantations, and education was carried on to a great degree by the employment of tutors. Having thus described the early social and industrial condition of the State, we are better prepared to investigate the origin and growth of the free school system in South Carolina.

The history of free school legislation in South Carolina naturally divides itself into four periods, embracing nearly two centuries. Each period, while greatly differing from the others in length and characteristics, is closely connected with all the rest. (1). The first is the colonial period, and represents the first efforts of the early settlers to provide for the education of the masses. (2). The second period extends from 1811, when the benefits of free schools were extended to the districts, and a more general system was established, to the

close of the civil war in 1865. (3). The third period covers that dark chapter in the history of the State commonly called the reconstruction period. (4). To the fourth and last division belongs the growth of the free school system in the State since the downfall of the carpet-baggers' *régime*, in 1876. As it is our purpose to consider more especially the germs of free schools in South Carolina, more attention will be paid to the first of these periods than to any other.

It was but natural that in Charleston free schools should first take root and flourish. It was at first the only town in the colony. It was here that the poorer classes were found in larger numbers than in the rural localities. About the beginning of the last century a society was formed in London for the purpose of propagating the gospel in foreign parts. It lent its support principally to those colonies where the Episcopal Church was the established order. From the fact that the Church of England was the established church of South Carolina, it received liberal aid from this charitable society. It is interesting to observe, in contemporary writings, the interest which the early parishes manifested in local education, and also the encouragement which they gave to it.

In 1705, the Reverend Samuel Thomas, a missionary of the above society, speaks of Goose creek parish in South Carolina: "The number of heathen slaves in this parish I suppose to be about 200; twenty of which I observe to come constantly to church, and these and several others of them well understanding the English tongue and can read." Of another parish he remarks: "I have here presumed to give an account of one thousand slaves belonging to our English in Carolina, so far as they know of it, and are desirous of Christian knowledge, and seem willing to prepare themselves for it, in learning to read, for which they redeem time from their labour. Many of them *can* read in the Bible distinctly, and great numbers of them were learning when I left the Province." Further, in the same memorial, Mr. Thomas says, "South Carolina is but an infant colony, and their treasury at best but small, out

of which they have, at present, appropriated 2,000 pounds to the service of the church, for the building six churches and as many parsonage houses, and buying glebe land; so that for every particular parish the publick disburse three hundred and thirty-three pounds, and £50 annually for all the six parishes; which, considering their present circumstances, is very extraordinary, and perhaps such instances of zeal can hardly be paralleled in these parts of the world."

The seeds of free schools planted by the charitable society of London, and nurtured by the people of the colony, were not slow in maturing. In 1712, a free school was established in Charleston, through private donations, and the legislature was its especial guardian. It appears that it was the object of this school, not only to furnish its pupils with a classical education, but to teach writing, arithmetic and merchant accounts. In order to encourage private donations, it was enacted that any person giving £20 could nominate a scholar to be taught free for five years. The master, in addition to enjoying the use of the lands, houses, and other property of the school, received a salary of £100 per annum. He was required to teach, without charge, twelve scholars, who were appointed by the commissioners of the school. The same act went further in establishing schools. It fixed a donation of £10 annually on each parish schoolmaster, and empowered the vestry of each parish to draw upon the public receiver for £12 in order to defray the expenses of building the parish school.

The first royal governor, after the revolution from proprietary misrule, was an earnest advocate of popular education, and did much to foster the growth of free schools. Many parishioners caught the growing enthusiasm and made donations for the encouragement of education. Especial mention should be made of the gift made by the Reverend Mr. Ludlam, of Goose Creek. He left his entire estate, valued at £2,000, for the foundation of a free school.

About the beginning of the last century a colony of Congregationalists, from Dorchester, Massachusetts, under the

guidance and direction of the Reverend Joseph Lord, settled in South Carolina at a place to which they gave the name of their old home in New England. With other institutions, these excellent Puritans brought with them their system of free schools. An act was soon passed by the colonial legislature for founding and erecting a free school at Dorchester, in St. George's parish. The free school idea of the town of Dorchester, Massachusetts, was thus transplanted to the free school of Dorchester town, South Carolina, where town and parish were reunited.

In 1735, Richard Beresford bequeathed a large sum of money towards erecting a free school in St. Thomas' parish. Shortly afterwards, free schools were erected at Ninety-Six, Beaufort, and in St. Thomas' parish. Many other societies were chartered, having for their object the erection of free schools. Colleges were founded at Charleston, Beaufort, Cambridge, and Pinckneysville. In many instances the State vested all the escheated property of a parish or a village in the trustees of schools and academies.

It is not maintained that the State, as yet, had established any extensive system of free schools, yet it is clear that great encouragement was given to all educational efforts. The matter of regulating the schools, however, was left to the parishioners themselves. This is seen in the case of St. Thomas' parish, where at Childsbury, James Childs bequeathed £600 towards erecting a free school, and the parishioners, by local subscription, increased the amount to £2,800. These parish free schools continued to flourish by local support, and their influence was potent for the intellectual good of South Carolina.

We now come to the second period in the history of free schools in this State. This period began in 1811, when the State assumed control of the schools, and extended until 1865. The act which established this system was entitled "an Act to establish Free schools throughout the State," and provides that "there shall be established in each election district

within this State, a number of free schools equal to the number of members which such district is entitled to send to the house of representatives in the legislature of this State. In each of these schools the primary elements of learning, reading, writing and arithmetic, should always be taught, and such other branches of education as the commissioners, to be hereinafter appointed, may from time to time direct."

Every citizen of the State was allowed to send his children or wards to the free school in his district free of charge. Where more children applied for admission to a school than the same could conveniently accommodate, preference was always given to the poor children. Three hundred dollars per annum was the amount appropriated for the support of each school. The schools were controlled by commissioners appointed by the legislature. The commissioners had a general oversight of the schools in their district, determining their situation, appointing the teachers, deciding on the admission of the scholars, and drawing on the comptroller for the school money. The act recognizes the existence of other free schools at that time in the following manner: "In all districts where a school or schools are already, or may hereafter be established by private funds or individual subscription, it shall be lawful for the commissioners of the free schools, at their discretion, to unite such part or parts of the fund provided by this act for such district with such school or schools, in such manner as may appear to them best calculated to promote the objects of this act."

Free schools were thus legally established throughout the State. But in point of fact they did not exist long before an effort was made by the members of the legislature from the sparsely settled districts to abolish the whole system. This was in 1813, two years after their general adoption. The objection was that they were too inconvenient and too expensive. This argument called forth an eloquent plea for free schools by a representative from Charleston. The speech is quoted at length in Mayor Courtenay's little monograph,

entitled "Education in South Carolina." A few words will, however, illustrate the spirit of the address. Speaking of the objection to the whole free school system on account of the scattered population in one or two districts, Mr. Crofts, the representative from Charleston, thus appealed to his opponent: "Let him look back and rejoice that this institution so flourishes in the bud. Let him look forward, and anticipating the fruit which it will bear, and the bounties which it will dispense, let him recoil from the meditated blow, and throw away the axe with which he assails its roots. What will be his feelings when it is prostrate, leafless and desolate? It is urged that owing to the sparse population of one or two districts the free schools there are comparatively useless, and therefore the whole system ought to be abolished. This evil time will, of itself, remove; and what kind of influence is that which would abolish a general good in order to get rid of a partial evil? There is a cloud, Mr. Speaker, which the sun cannot penetrate—why does he shine at all? There are rocks impenetrable to the dews of heaven—why are not showers withheld altogether? There are barren places that produce nothing—why is not agriculture abandoned? No, sir, let us rejoice in the good we have done, and regret not that we cannot do everything at once."

Free schools were not abolished in South Carolina. They continued to receive the support of the State, and were managed on the same plan as when first established, only increasing in number.

In 1828, seventeen years after their general establishment, there were eight hundred and forty schools in the State and nine thousand and thirty-six pupils. Twelve years later, in 1840, there were five hundred and sixty-six free schools, with twelve thousand five hundred and twenty pupils. In 1850 there were seven hundred and twenty-four free schools in the State, with seventeen thousand eight hundred and thirty-eight children attending them. The support of these schools for the same year was two hundred thousand and six hundred

dollars. At the outbreak of the civil war, in 1861, free schools had grown so rapidly that twenty thousand children attended them, and they had an annual support of more than two hundred thousand dollars.

When the men who had been engaged in the great war of secession returned to their homes in South Carolina, poverty stared them in the face. The homes of many had been destroyed by the ravages of war. The freedom of the blacks had also been proclaimed. Before their emancipation the negroes represented the wealth of the State. After the emancipation of the negroes, the embarrassing question arose how it was possible to educate three times the number of children on one-third of the money. The reconstruction undertook to answer this question. Many earnest and zealous teachers came from the North to engage in the great work. But with them came political demagogues and over-zealous reformers. They exercised little judgment. Instead of trying to secure the co-operation of the native teachers, they ignored them. The social sentiments of the people were utterly disregarded. Instead, therefore, of securing the sympathy, good-will, and encouragement of the white population, these intruders incurred righteous indignation. The corrupt administration of the "carpet-bagger" and of the negro seriously interfered with the free schools. The whole system had well nigh collapsed when the radical ring was overthrown in 1876.

As an illustration of the reckless expenditure of the school money by negro officials during the carpet-bag *régime*, the following example will suffice. The amount of the past school indebtedness of Barnwell county, taken from the report of the Superintendent of Education of South Carolina, was:

From November 1, 1872, to November 7, 1876	$3,648.13
From November 1, 1876, to November 1, 1878	890.88
	$4,539.01

When the people of South Carolina resumed control of their local affairs in 1876–77, the outlook of the free schools

was perhaps even gloomier than at the close of the war. At that time the State was a battle-field covered, as it were, with blasted homes, smoking ruins, with the dead and wounded. But in 1877 that battle-field presented the appearance of having suffered pillage at the hands of camp followers. Much of the school fund had been squandered; the teachers were badly paid; the pupils poorly taught; the school buildings in many places were badly out of repair. More than this, a school debt of more than $200,000 was left for the white population to pay. But the people did not despair. Earnest and energetic souls inspired them, and, with the determination characteristic of their race, the people of South Carolina slowly began the great work that lay before them. The schools were organized on a more equitable basis; the teachers were selected with more care; attention was paid to the pupils. Provision was made for the liquidation of the enormous school debt of 1877. The legislature provided that the poll tax of most of the counties should be used to extinguish the debt. Free school resources were subjected to a very severe strain, but the teachers were convinced of the honesty of the administration, and confidence was soon restored.

During the year 1880–1 there were 3,057 public schools in the State of South Carolina, an increase of 84 over the preceding year. The school population, white and colored, was 133,458, out of a total population of 995,577. The total number of teachers was 3,249, the average wages being $25.45 per month for males, and $24.48 for females. The entire amount of salaries paid to teachers during the year was $309,855.10, and the total available school fund was $415,108,943. These facts present a most hopeful picture for the free schools of South Carolina. This cheering outlook is largely due to the heroic efforts of the last Superintendent of Education of the State, Col. Hugh S. Thompson, now Governor of the State, who held the above educational position from the time of the overthrow of the carpet-bag government. With indefatigable zeal he revived the free

school system and gave it an impetus which, if sustained by the co-operation of the people, will be of lasting good to the State.

One of Colonel Thompson's special schemes was the organization of two Normal schools, one for white and one for colored teachers. These schools, which meet every summer, are largely attended, being free of charge. They are conducted by the best teachers and lecturers in the South and West. The expenses incurred are defrayed by the State. The good done by these Normal schools cannot be over-estimated. While quickening the teachers, they also influence the pupils and interest the whole public in the great cause in which they are engaged. In the words of the official report on these institutions: "The importance of the work will, perhaps, be better understood by all when it is known that the students of the Institute, taking the actual number as stated by them, had charge of the education of an aggregate of about 15,000 children, or of nearly one-fourth of the white children of the State who are attending school. It cannot be too strongly emphasized that normal institutes are maintained for the benefit of the children of the State, not for the personal benefit of the teachers who attend them."

The growth of municipalities will have a powerful influence upon the growth of the free schools, and free schools will react upon the municipalities and quicken local life. A demand for the right of *local* taxation for the support of schools is already growing in South Carolina. This, however, is but a return to old colonial principles. When everywhere adopted, local taxation will be found to be of great practical benefit, not only in increasing the influence and efficiency of the free schools, but also in demonstrating to the people the great advantage of controlling all their local affairs. Cheering signs for the future of free schools in South Carolina must be welcomed, not only by the citizens of the State, but by good citizens everywhere, and by all who prefer enlightenment to ignorance, morality to vice, happiness to misery, and who honor an intelligent, upright, law-abiding people.

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